

No. 15430

United States
Court of Appeals
For the Ninth Circuit

SAM BLASSINGAME,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

Transcript of Record

Appeal from the United States District Court for the
Western District of Washington,
Northern Division.

FILED

OCT 15 1957

PAUL P. O'BRIEN, CLERK



No. 15430

United States
Court of Appeals
For the Ninth Circuit

SAM BLASSINGAME,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

Transcript of Record

Appeal from the United States District Court for the
Western District of Washington,
Northern Division.



INDEX

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

	PAGE
Certificate of Clerk.....	208
Designation of Record on Appeal, Amended..	211
Indictment	3
Judgment and Sentence.....	7
Motion in Arrest of Judgment.....	6
Names and Addresses of Attorneys.....	1
Notice of Appeal.....	9
Statement of Points.....	210
Verdict	5
Testimony of Witnesses.....	10
Blassingame, Sam	
—direct	178
—cross	181
—redirect	189
Clairborne, Allen	
—direct	190, 195
—cross	201
Clark, Johnny	
—direct	90

Testimony of Witnesses—(Continued):

Du Puis, Charles F.

—direct	120
—cross	125

Fahey, Charles

—direct	64, 168
—cross	79, 172
—redirect	86

Gooder, Lavern E.

—direct	50, 166
—cross	56

Henaby, William E.

—direct	156
---------------	-----

Kirschner, C. F.

—direct	129, 139, 194
—cross	151
—redirect	156

Sprinkle, Chester G.

—direct	11
—cross	23
—redirect	46

Waite, Robert W.

—direct	161
---------------	-----

NAMES AND ADDRESSES OF ATTORNEYS

CORNELIUS CHAVELLE,

1401 Dexter Horton Bldg.,

Seattle 4, Washington;

MAX KOSHER,

JOHN N. LEAVITT,

619 Second Ave.,

Seattle 4, Washington,

Attorneys for Appellant.

CHARLES P. MORIARTY,

United States Attorney;

JOHN ROBERTS, JR.,

Assistant United States Attorney,

1012 U. S. Courthouse,

Seattle 4, Washington,

Attorneys for Appellee.



United States District Court, Western District of
Washington, Northern Division
No. 49488

UNITED STATES OF AMERICA,

Plaintiff,

vs.

SAM BLASSINGAME,

Defendant.

INDICTMENT

The Grand Jury charges:

Count I.

That on or about May 29, 1956, at Seattle, within the Northern Division of the Western District of Washington, Sam Blassingame did knowingly, wilfully and unlawfully receive and conceal a quantity of narcotic drugs, to wit, thirty-six (36) grains of heroin hydrochloride, knowing the said heroin hydrochloride to have been imported contrary to law.

All in violation of Section 174, Title 21. U.S.C.

Count II.

That on or about May 29, 1956, at Seattle, within the Northern Division of the Western District of Washington, Sam Blassingame did knowingly, wilfully and unlawfully sell and give away a quantity of narcotic drugs, to wit, thirty-six (36) grains of heroin hydrochloride, not in pursuance of a written order of the person to whom such heroin hydro-

chloride was sold and given away on a form issued in blank for that purpose by the Secretary of the Treasury.

All in violation of Section 4705(a), Title 26, U.S.C.

Count III.

That on or about June 19, 1956, at Seattle, within the Northern Division of the Western District of Washington, Sam Blassingame did knowingly, wilfully and unlawfully receive and conceal a quantity of narcotic drugs, to wit, five hundred two (502) grains of heroin hydrochloride, knowing the said heroin hydrochloride to have been imported contrary to law.

All in violation of Section 174, Title 21, U.S.C.

Count IV.

That on or about June 19, 1956, at Seattle, within the Northern Division of the Western District of Washington, Sam Blassingame did knowingly, wilfully and unlawfully dispense and distribute a quantity of narcotic drugs, to wit, five hundred two (502) grains of heroin hydrochloride, said heroin hydrochloride being neither in nor from the original stamped package and not bearing appropriate tax paid revenue stamps.

All in violation of Section 4704(a), Title 26, U.S.C.

A True Bill.

/s/ JOHN STEEN,
Foreman.

/s/ CHARLES P. MORIARTY,
United States Attorney;

/s/ JOHN A. ROBERTS, JR.,
Assistant United States
Attorney.

Bail: \$10,000.

Presented and filed Sept. 12, 1956.

—————

[Title of District Court and Cause.]

VERDICT

We, the Jury in the Above-Entitled Cause, Find the Defendant, Samuel Blassingame not guilty as charged in Count I of the Indictment; and further find the Defendant, Samuel Blassingame, not guilty as charged in Count II of the Indictment; and further find the Defendant, Samuel Blassingame is guilty as charged in Count III of the Indictment; and further find the Defendant, Samuel Blassingame, is guilty as charged in Count IV of the Indictment.

Dated: January 16, 1957.

/s/ PAUL TYCHSEN,
Foreman.

[Endorsed]: Filed Jan. 16, 1957.

[Title of District Court and Cause.]

MOTION FOR ACQUITTAL N O V IN ARREST
OF JUDGMENT OR IN THE ALTERNA-
TIVE MOTION FOR A NEW TRIAL

Comes Now the defendant, Sam Blassingame, and moves the court for an order of acquittal N O V in arrest of judgment or in the alternative for a new trial.

The motion for acquittal N O V in arrest of judgment is based upon the insufficiency of the evidence to justify the submission of Counts III and IV of the indictment to the jury for their consideration, and in the event that the motion for acquittal N O V in arrest of judgment is denied, the defendant above named moves for a new trial upon the following grounds:

1. That the verdict is contrary to the interest of justice.
2. For error occurring at the time of the trial and excepted to by the defendant.
3. That the verdict is contrary to law.

/s/ CORNELIUS C. CHAVELLE,
Attorney for Defendant,
Sam Blassingame.

[Endorsed]: Filed Jan. 18, 1957.

United States District Court for the Western
District of Washington, Northern Division

No. 49488

UNITED STATES OF AMERICA,

vs.

SAM BLASSINGAME.

JUDGMENT AND COMMITMENT

On this 28th day of January, 1957, came the attorney for the government and the defendant appeared in person and with his attorney, Cornelius C. Chavelle.

It Is Adjudged that the defendant has been convicted upon a jury verdict of the offense of violation of Section 174, Title 21, U.S.C., and Section 4704 (a), Title 26, U.S.C., as charged in Counts III and IV of the Indictment and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

It Is Adjudged that the defendant is guilty as charged and convicted.

It Is Adjudged that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of Five (5) Years in the U. S. Penitentiary at McNeil Island, Washington, or such other

like institution as the Attorney General of the United States or his authorized representative may by law designate, and shall pay a fine of \$2,000.00 and shall stand committed until said fine is paid, on Count III of the Indictment.

It Is Further Adjudged that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of Five (5) Years in the U. S. Penitentiary at McNeil Island, Washington, or such other like institution as the Attorney General of the United States or his authorized representative may by law designate, and shall pay a fine of \$2,000.00 and shall stand committed until said fine is paid, on Count IV of the Indictment. The execution of the sentence imposed on Count IV shall be consecutive to, and not concurrent with, the execution of the sentence imposed on Count III.

It Is Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

Done in Open Court this 28th day of January, 1957.

/s/ WILLIAM J. LINDBERG,
United States District Judge.

Presented and approved by:

/s/ JOHN A. ROBERTS, JR.,
Asst. U. S. Attorney.

[Endorsed]: Filed Jan. 28, 1957.

[Title of District Court and Cause.]

NOTICE OF APPEAL

Name and Address of Appellant: Sam Blassingame, 2921 Yesler Way, Seattle, Washington.

Name and Address of Appellant's Attorney: Cornelius C. Chavelle, 1401-04 Dexter Horton Building, Seattle, Washington.

Offense: Violation of Section 174, Title 21, U.S.C. (1 Count); Violation of Section 4704(a), Title 26, U.S.C. (1 Count).

Sentenced: January 28th, 1957.

I, the above-named appellant, hereby appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the above-stated Judgment.

Dated this 28th day of January, 1957.

/s/ CORNELIUS C. CHAVELLE,
Appellant's Attorney.

Receipt of copy acknowledged.

[Endorsed]: Filed Jan. 29, 1957.

In the District Court of the United States for the
Western District of Washington, Northern Di-
vision

No. 49488

UNITED STATES OF AMERICA,

Plaintiff,

vs.

SAM BLASSINGAME,

Defendant.

TRANSCRIPT OF PROCEEDINGS

William J. Lindberg, United States District Judge.

Appearances:

JOHN A. ROBERTS, JR.,

Assistant United States Attorney,

Appeared for and on behalf of the
Plaintiff; and

CORNELIUS C. CHAVELLE,

MAX KOSHER,

Appeared for and on Behalf of the De-
fendant. [2*]

January 15, 1957—10:00 A.M.

CHESTER G. SPRINKLE

upon being called as a witness for and on behalf of
the plaintiff, and upon being first duly sworn, testi-
fied as follows:

The Clerk: State your full name and spell your
last name, please.

(Testimony of Chester G. Sprinkle.)

The Witness: Chester G. Sprinkle, S-p-r-i-n-k-l-e
(spelling).

Direct Examination

By Mr. Roberts:

Q. Where do you reside, Mr. Sprinkle?

A. 154 West 59th, Seattle, Washington.

Q. And what is your occupation?

A. Narcotic officer for the Seattle Police Department.

Q. How long have you been with the Seattle Police Department?

A. Oh, approximately 10 years.

Q. And prior to that time have you had any other police training or work?

A. I was a Federal Narcotic Agent for two and one-half years during this interim.

Q. Now, Mr. Sprinkle, were you so employed during the month of May in the year 1956?

A. Yes, sir. [24]

Q. Inviting your attention to on or about May 29th of 1956, I will ask you if you had occasion to meet one Johnny Clark on or about that date?

A. Yes, sir; I did.

Q. Will you describe the circumstances surrounding that meeting?

A. Detective Waitt and myself met Johnny Clark approximately 9:00 o'clock at a prearranged meeting place.

Q. And where was that?

A. That was at the train depot on Jackson Street—the Great Northern train depot.

(Testimony of Chester G. Sprinkle.)

Q. What did you do after meeting him?

A. I drove Johnny up to a parking lot at 7th and Madison, and met the Federal agents up there—Agents Fahey, DuPuis, and Mr. Gooder.

Q. Now, I am referring to May 29, 1956.

Did you at any time that evening go to the corner of 19th and Roy? A. Yes, sir.

Q. Pardon me—I am getting ahead of your story. What did you do?

A. Right after that, we proceeded to 19th and East Roy, and I went into a phone booth with Johnny Clark, and I observed him——

Q. (Interposing): Well, now, describe the phone booth. [25] Was it in a building?

A. No; it was a little independent phone booth on the northeast corner of 19th and Roy.

Q. I will ask you to describe Johnny Clark.

A. Johnny Clark is a colored man, and he is approximately 27 years old, and about five feet nine inches, maybe 145 pounds.

Q. And with relation to narcotics and the use thereof, what is your knowledge of Johnny Clark?

Mr. Chavelle: I will object to that, your Honor, as not material or relevant. There is no proper foundation.

The Court: Will you read that, please, Mr. Reporter?

(Whereupon, the following was read by the reporter: “Question: And with relation to narcotics and the use thereof, what is your knowledge of Johnny Clark?”)

(Testimony of Chester G. Sprinkle.)

Mr. Roberts: I submit, your Honor, my question may be in bad form, but I believe that the subject matter is pertinent.

Mr. Chavelle: I don't think the subject matter is pertinent, and I don't think it is correct form.

The Court: I will sustain the objection. [26]

Q. (By Mr. Roberts, continuing): In connection with your work as a Narcotics Officer for the Seattle Police Department, what dealings, if any, have you had with Johnny Clark?

Mr. Chavelle: I will object to that as not relevant in this case at all. I object to the form of the question.

The Court: It seems to be immaterial at this time. I will sustain the objection. It could be at a later date.

Mr. Roberts: Yes; very well.

Q. (By Mr. Roberts, continuing): On arriving at the corner of 19th and Roy, what did you do?

A. Johnny Clark and I went into this phone booth that I mentioned, and I observed Johnny going through a notebook, and pick out a phone number with the name "Sam" behind it.

I am not sure of the phone number at this time.

Then he put a dime in, and dialed this number, and I monitored the phone with Johnny.

Q. What do you mean when you say, "monitored the phone"?

A. He held the phone up to my ear so that we could both hear what was said. I heard a man [27] answer.

Johnny asked him if it was all right to come by.

(Testimony of Chester G. Sprinkle.)

Mr. Chavelle: I will object to that, your Honor, to any conversation. It must first be established that this man is familiar with the person on the other end of the phone, and knows—the proper foundation must be laid—and knows who Johnny Clark was talking to, if anyone, and who it was; and that he is, firstly, familiar with the man's voice, and I object, before any conversation can be elicited by this witness to any Johnny Clark is supposed to have had.

Mr. Roberts: I certainly agree with counsel, your Honor, and I feel that conversation heard would be hearsay and inadmissible; so whether or not you—

Mr. Chavelle (Interposing): I will ask the last answer be stricken.

The Court: The answer with respect to what was stated over the telephone, as the witness testified, may be stricken, and the jury will disregard that portion of the testimony.

Q. (By Mr. Roberts): After the call was placed, Mr. Sprinkle, state whether or not you were familiar with the voice at the other end of the phone call. A. Yes, sir; I believe I was.

Q. Whose voice was it? [28]

A. I believed it to be Mr. Blassingame.

Mr. Chavelle: I will object to that, your Honor, and ask that I examine Mr. Sprinkle before he goes into this conversation.

He said he believed it was Mr. Blassingame. I

(Testimony of Chester G. Sprinkle.)

believe we should have an opportunity to examine his past experience.

The Court: On voir dire, you may. Go ahead. Do you want to ask him?

Mr. Chavelle: Yes.

The Court: Go ahead.

Mr. Chavelle: Now, Mr. Sprinkle, have you had previous conversations prior to the 29th day of May, 1956, with Mr. Blassingame on the telephone?

The Witness: No, sir; I have not.

Mr. Chavelle: You never had a conversation with him on the telephone?

The Witness: No, sir.

Mr. Chavelle: So, you would not recognize his voice, any more than you would recognize mine, because of no previous experience in talking to him on the telephone, isn't that correct?

The Witness: No, sir; I wouldn't say that is correct.

Mr. Chavelle: Well, you say you believe it [29] was his voice, but you have had no experience prior to determine his voice, is that right?

The Witness: On the telephone; I have never talked to him on the telephone. I have talked to him before on the street.

Mr. Chavelle: People do talk and sound differently on the telephone than they do personally; is that correct?

The Witness: That is right.

Mr. Chavelle: Can you testify positively you

(Testimony of Chester G. Sprinkle.)

could recognize Sam Blassingame's voice on the telephone? Is that right?

The Witness: I wouldn't positively say so; no, sir.

Mr. Chavelle: I don't think that that is sufficient. I don't think there is proper foundation laid here.

The Court: He stated he has heard him talk, and he said he believed he was. It seems to me it is a matter of weight for the jury, and the Court will overrule the objection.

Q. (By Mr. Roberts): Now, then, what was——

Mr. Chavelle (Interposing): Just for the record, I will renew my objection, or state my objection for [30] the record, your Honor.

The Court: You may.

Mr. Chavelle: This would be violation of the hearsay rule, and no proper foundation has been laid for this witness to become either an expert witness or to form an opinion as to whether or not this was Mr. Blassingame's voice on the ground he never talked to him on the phone before, and he merely states now he believes it was his voice; and there is no foundation for that position.

The Court: The record may show your objection, Mr. Chavelle.

Mr. Chavelle: Thank you.

Q. (By Mr. Roberts, continuing): Now, Mr. Sprinkle, will you state the substance of the conversation?

Mr. Chavelle: My objection goes to all this conversation.

(Testimony of Chester G. Sprinkle.)

A. He asked if it was Sam, and the voice on the other end of the line said, "Yes."

As near as I can recall it, he said, "Is it all right if I come by?"

And the man on the other end of the line said, "Yes," and that is about the substance of it. It was very concise and brief. [31]

Q. (By Mr. Roberts): And you heard the voice on the other end of the line at that time?

A. Yes, sir.

Q. After that telephone call, what did you do then?

A. We put Johnny Clark in one of the Government cars, and Detective Waitt and myself and Federal Agent Gooder accompanied him down to the corner of 22nd and East Thomas.

During this time we could observe Mr. Gooder searching Clark in the back of the car, and he gave him some type of money.

At the corner of 22nd and Thomas, Gooder, who was driving, pulled just south of Thomas on 22nd, and parked the car and turned the lights out.

I got out of the car with Mr. Clark, and I walked beside him north on 22nd to approximately the corner of Thomas Street, or there is a lot there. We cut through the lot, and I dropped off towards the far end of the lot, and I observed Johnny Clark walk down to the driveway that leads into the house on 22nd and East Thomas.

I saw him go to the back door and knock. In a

(Testimony of Chester G. Sprinkle.)

few moments the door opened, and Mr. Blassingame let Johnny in.

Q. Now, I might interrupt you there. You say that Mr. Blassingame let Johnny in? [32]

A. Yes, sir.

Q. Do I understand—what were—state whether or not you observed any individual in the door at that time?

A. I observed Mr. Blassingame in the doorway.

Q. The man you observed in the doorway, is he present in the courtroom? A. Yes, sir.

Q. Will you indicate his position in the courtroom? A. The man next to Mr. Chavelle.

Mr. Roberts: May the record show the witness identified Mr. Blassingame?

The Court: The record speaks for itself.

Mr. Roberts: Yes, sir.

Q. (By Mr. Roberts): Now, then, what happened?

A. It was about five minutes later—possibly ten—we observed, or I observed about a 1954 or 1955, red and white Oldsmobile drive up, and a woman I believe to be Bernice Fitzgerald, jumped out of the car and ran in the same back door Mr. Clark had gone in.

She wasn't in there over two minutes, and she returned and got in the car and drove away.

Now, not over two or possibly three minutes later a light came on the back porch, and it looked like an Oriental, I believe a Japanese man, came out on the back [33] porch.

(Testimony of Chester G. Sprinkle.)

Q. Was the light on the door you observed Clark go in?

A. It was just to the right of the doorway coming out, and it was possibly five feet above the doorway.

Q. And then what happened?

A. The light came on, and this Oriental came out and either mopped or swept the porch off.

Q. Did he come out the back door Clark entered?

A. No, sir; the other side of the duplex.

Q. And then what happened?

A. He went back in, and maybe two or three minutes later I observed the door open and Mr. Blassingame, in a white shirt, stuck his head out and looked both directions and stepped back in, and Mr. Clark came out.

Johnny walked past the foot path and past the vacant lot, and I waited until I couldn't be seen from the doorway, and I walked beside Johnny back to the Government car.

He got in the back seat and handed Agent Gooder a package, which Waitt and myself and Clark and Gooder initialed at the time.

Q. I will ask that you examine the envelope marked Plaintiff's Exhibit No. 1, examine the contents of that envelope, and state what it is, if you know? [34]

A. This is the same bindle that Johnny Clark handed to Mr. Gooder in the back of the car.

Q. How are you able to make that statement?

(Testimony of Chester G. Sprinkle.)

A. The date and the time is on it. I saw Mr. Gooder place that on there, and I placed my initials, "C.G.S.," on here.

Q. Do your initials appear thereon?

A. Yes, sir.

Q. Do other initials appear thereon?

A. Yes; they do.

Q. Did you observe anybody else place their initials on the bundle?

A. Detective Waitt, Agent Gooder, and also Mr. Clark.

Q. Very well. You can return that to the envelope.

Now, then, inviting your attention to the date on or about June 19, 1956, state whether or not you met Johnny Clark at or about that time?

A. Yes, sir. It was approximately 9:00 o'clock again on the evening at the same train depot.

Q. What did you do? Who was with you?

A. Detective Kirschner and Detective Bill Henaby, and two narcotic officers.

Q. Of the Seattle Police Department?

A. Yes, sir.

Q. After meeting Clark, what did you do? [35]

A. We had made prearranged plans to meet the Federal officers at 7th and James, and we drove up there.

Q. Did you meet with anyone?

A. Yes, sir; we met Mr. Fahey and Mr. Gooder, and Agent Du Puis, and the U. S. Marshal, Jim Clark, was there, and also I believe the narcotic clerk, Lee Hope, was there.

(Testimony of Chester G. Sprinkle.)

Q. Now, then, what did you do?

A. We talked to Johnny a few moments.

Q. I don't wish you to relate the conversation. What happened as a result of this meeting?

A. We talked to Johnny a few moments and had Johnny in the back of the car with us, and we stayed with him while some of the other officers left in one of the cars.

Q. Did they return?

A. They returned in approximately twenty-five or thirty minutes; maybe longer.

Q. What happened upon their return?

A. We all proceeded down to our Narcotics Office at the Seattle Police Department, and we attempted to lift some fingerprints off of a package of white powder.

Q. You observed a package of white powder?

A. Yes, sir; I did.

Q. Will you examine Plaintiff's Exhibit No. 2, and state what it is? I am referring to the contents of that [36] envelope.

A. This is the same rubber container that we attempted to get fingerprints off of down there, and we also marked our initials on it.

Q. Tell the jury how you are able to recognize and make the definite statement?

A. The date and time is also on this one, and my initials, and theirs, are all on it. That is the way we mark all the evidence.

Q. You, yourself, marked this for what purpose?

A. For future identification in court.

(Testimony of Chester G. Sprinkle.)

Q. All right; and what happened to this particular rubber container, if you know, after you marked it?

A. It was in the custody of one of the Federal agents; I believe Mr. Fahey had custody of it.

Mr. Roberts: I have no further questions.

The Court: I think we might take a recess now.

Mr. Chavelle: Fine, your Honor.

The Court: Members of the Jury:

We will now take the midmorning recess. It is a little bit late this morning, but I did not notice the time.

In the course of this case, while serving as jurors, be cautious on any occasion and be careful you [37] don't discuss this case with your fellow jurors or anyone else on the outside, and be careful you do not formulate or reach any conclusions regarding the issues in this case until you have heard all the evidence, and the instructions of the Court, and the case is finally submitted to you for your verdict.

Bear in mind that the plaintiff puts in their testimony first, and it is necessary to have all the evidence and the law with respect to it before you reach your conclusions, and you do that at the time of your final deliberation when the case is completed.

You may now be excused. Bear this admonition in mind whether I repeat it or not on the occasion of every recess.

(Whereupon, the jury retired from the courtroom.)

(Testimony of Chester G. Sprinkle.)

The Court: Just a moment, please.

For information of counsel, when the jury goes out, it is my practice for the parties and counsel and the Court to remain, and we recess afterwards.

Mr. Chavelle: All right, your Honor.

The Court: The Court will take a ten-minute recess.

(Whereupon, at 11:19 o'clock a.m., a recess was had in the within-entitled and numbered cause, [38] until 11:32 o'clock a.m., January 15, 1957, at which time counsel and the defendant, heretofore noted being present, the following proceedings were had, to wit.)

The Court: You may call the jury.

(Whereupon, the jury was returned to the courtroom.)

The Court: You may be seated.

It is stipulated that the jury and the defendant are present in the courtroom?

Mr. Chavelle: Yes, your Honor.

Mr. Roberts: It is so stipulated, your Honor.

The Court: You may proceed.

Mr. Roberts: I have concluded my interrogation, your Honor.

Mr. Chavelle: All right.

Cross-Examination

By Mr. Chavelle:

Q. Mr. Sprinkle, approximately what time was it when you arrived at the intersection of 19th and

(Testimony of Chester G. Sprinkle.)

East Roy, near the Roycroft Theatre, on the 29th day of May, 1956?

A. Approximately twenty minutes to ten.

Q. And would you describe this phone booth in more particular? [39]

A. As I remember it, it is a little independent phone booth, one of the small ones that stand all by itself. It is right next to a little delicatessen or ice creamery on the northeast corner of 19th and Roy.

Q. A closed phone booth? A. Yes, sir.

Q. With a pay phone in it? A. Yes.

Q. And large enough for two people to get in there?

A. We had to squeeze in there and shut the door.

Q. Now, you stated on direct examination that in your belief it was Mr. Blassingame on the other end of the telephone, is that correct?

A. That is correct.

Q. I will ask you again if you have ever had any telephone conversation with Mr. Blassingame?

A. No, sir.

Q. I will ask you what led you to believe it was Mr. Blassingame's voice, when you state you had no previous experience in talking over the phone with him?

A. I have known Sam for a long time, and I have talked with him a few times and listened to him talk several times on the street and other places. Sam has a peculiar voice and peculiar drawl, and

(Testimony of Chester G. Sprinkle.)

I was pretty positive it was Sam Blassingame's voice. [40]

Q. Haven't most colored people got a drawl?

A. Yes, they have.

Q. It is possible, is it not, it could have been somebody other than Sam Blassingame on the other end of the phone?

A. It is possible.

Q. Prior to the 29th day of May, 1956, when was the last time you had any conversation with Mr. Blassingame, other than over the phone?

A. It was quite some time.

Q. Would it be a year?

A. Possibly a year.

Q. Possibly a year since you last talked to him, which would be a year prior to this telephone conversation, is that correct?

A. Pretty close.

Q. So that you are unable to state with firm positiveness that it was Sam Blassingame on the other end of the phone?

A. How do you say that?

Q. I say, you are unable to state with firm positiveness that it was Sam Blassingame on the other end of the phone?

A. No, sir.

Q. What [41]

A. No, sir.

Q. You are unable to state that?

A. That is correct; yes, sir.

Q. With whom did this person by the name of Johnny Clark ride to his next destination?

A. At what time?

Q. With whom did this person referred to as Johnny Clark ride with then to the next destination?

A. You mean from 19th and Roy?

(Testimony of Chester G. Sprinkle.)

Q. Yes.

A. Agent Sam Gooder, myself, and Detective R. W. Waitt.

Q. What was the next destination?

A. It was approximately 20th and Roy, I believe, where we stopped the car for a moment to search Johnny Clark.

Q. Who searched Johnny Clark?

A. Agent Gooder.

Q. Where were you at the time the search was going on there? A. I was in the front seat.

Q. Where was Johnny Clark being searched; where was he located? A. In the back seat.

Q. Did you pay any attention to the search?

A. Yes, sir. [42]

Q. Did you observe the entire search?

A. Just about.

Q. What do you mean by "just about"?

A. Well, I observed Mr. Gooder going through his pockets, and feeling up and down his pants legs, and coat, and all of his pockets, and checking his wallet, and anything in his pockets, and I observed him give him what I believe to be Government advance funds at the time.

Q. Pardon?

A. And I saw him give Mr. Clark what I believe to be Government advance funds.

Q. I didn't ask you that. I asked about the search.

Was the inner clothing of Mr. Clark examined?

(Testimony of Chester G. Sprinkle.)

A. I couldn't tell you to what extent Agent Gooder examined him.

Q. I didn't ask you that. Was the inner clothing examined? A. I don't know.

Q. Were the shoes examined?

A. I don't know that.

Q. Was the body itself examined?

A. I don't believe it was.

Q. Were shoes removed?

A. I don't remember.

Q. Well, you must remember whether or not the shoes [43] were removed, if you observed the search.

A. I don't remember whether his shoes were removed or not, or whether Mr. Gooder felt in them, or how he handled it.

Q. Was his pants leg pulled up, and his legs examined; his garters or socks?

A. I don't believe they were pulled up; no, sir.

Q. In other words, the type of search you were talking about was through his pockets?

A. I didn't observe the whole search.

Q. I thought you said a few moments ago you observed the whole search? A. No, sir.

Q. What part didn't you observe?

A. Well, I was busy with a couple of other details, trying to tell Johnny what to do, and I observed most of the search.

Q. What part of the search did you not observe?

A. Well, that is pretty hard to pin that down.

Q. Were you in the car all the time?

(Testimony of Chester G. Sprinkle.)

A. Yes.

Q. Or did you leave the car?

A. No, sir; I was in the car all the time.

Q. But you were not paying attention to the search in the entirety, is that correct? [44]

A. Not in the entirety.

Q. So that there are various items you don't know about, such as the shoes and the legs and the body search, and the underclothing, and so on; is that correct? A. That is right.

Q. And you had nothing to do with the search itself? A. No, sir.

Q. Just as an impartial observer; is that correct? A. That is correct.

Q. Did you search Johnny Clark after you and Clark left the car before he entered these premises?

A. No; I did not.

Q. Then you wouldn't be able to tell this jury whether or not, before Mr. Clark entered that house, or during the time he entered the house—prior to the time he entered the house—whether he had any narcotics on his person, would you?

A. Would you restate that, please?

Q. It is a long question.

The Court: Do you want the reporter to read it? The reporter will read the question, please.

(Whereupon, the following was read by the reporter: "Question: Then you wouldn't be able to tell this jury whether or not, before Mr. Clark entered [45] that house, or during the

(Testimony of Chester G. Sprinkle.)

time he entered the house—prior to the time he entered the house—whether he had any narcotics on his person, would you?’’)

A. I believed him to be clean of narcotics.

Q. (By Mr. Chavelle): How did you reach that conclusion when you didn't have anything to do with the search?

A. I witnessed most of the search, and I took it for granted that the agent that was completing the search did a thorough job. We were working on another detail.

Q. You take it for granted he did a thorough job, and you don't know whether the shoes were searched or the body was searched or the under-clothing was searched; is that correct?

A. Do you mean checking his bare body?

Q. Taking off his shirt? A. No, sir.

Q. You say you just take it for granted he was clean of narcotics? A. Yes, sir.

Q. By the partial observation you made of the search; is that correct? A. Yes, sir.

Q. It is still possible, at least, from your testimony, that he might have had some narcotics on his person, [46] is that correct?

A. It is possible.

Q. Now, you have made some mention about Government funds. To what are you referring?

A. To what am I referring?

Q. Yes.

A. Invariably in these cases one of the Government agents will——

(Testimony of Chester G. Sprinkle.)

Q. (Interposing): I am asking you about this case. Confine yourself to this case itself. What are you referring to as Government funds?

A. It would be money to purchase narcotics, of which the serial numbers would be recorded, or were recorded.

Q. Were Government funds given to Mr. Clark?

A. Yes, sir.

Q. Where? A. In the back of the car.

Q. Did you observe that? A. Pardon me?

Q. Did you observe the handing of the money to Mr. Clark? A. Yes, sir.

Q. And how much was it?

A. I don't remember at this time.

Q. You observed the handing of the money? [47]

A. That is correct.

Q. Don't you know how much it was?

A. No, sir; I don't remember.

Q. Do you have any idea how much it was?

A. We have nothing to do with that.

Q. I know, but you observed the handing of the Government funds to Johnny Clark, and I am asking you how much money it was?

A. I can't tell you how much it was. I don't remember.

Q. Was that another partial observation you made of Johnny Clark?

A. No, sir; that was a full observation.

Q. How many bills were given to him—do you know that? A. No, sir; I don't.

Q. Were bills given to him? A. Yes, sir.

(Testimony of Chester G. Sprinkle.)

Q. You don't know how many?

A. No; I don't.

Q. Do you know the denominations?

A. No.

Q. Do you know whether they were marked?

A. I know that the serial numbers were recorded.

Q. Were the bills marked themselves? [48]

A. No, sir; they were not.

Q. Who gave the money to Johnny Clark?

A. Agent Gooder.

Q. That was before he left the automobile?

A. Yes, sir; before he left the automobile.

Q. What did Johnny Clark do then with the money? A. Put it in his pocket.

Q. Which pocket?

A. I don't remember which pocket.

Q. Coat pocket—pants pocket—what pocket?

A. I don't recall.

Q. You don't recall. Did you see him hand the money to anybody after he received this money?

A. In the car?

Q. Any time? A. No, sir.

Q. Did you ever retrieve the marked money?

A. Not that I know of.

Q. Was any attempt made to retrieve the marked money that evening in question? A. No, sir.

Q. Do you know whether or not the marked money was paid over to anyone?

A. Was what?

Q. Was the marked money paid to anyone? [49]

(Testimony of Chester G. Sprinkle.)

A. How do you mean that?

Q. Do you know whether or not Johnny Clark disposed of the money?

A. I witnessed Mr. Gooder check for money on Johnny Clark when Johnny got back in the car.

Q. Was there any money on him then?

A. No, sir.

Q. Do you know from your own personal knowledge to whom the money was given? Do you know of your own personal knowledge to whom the money was given?

A. It was given to Johnny Clark before he left the car.

Q. I know; but do you know of your own personal knowledge to whom Johnny Clark gave the money?

A. No, sir; I didn't.

Q. Did you make any attempt to enter that house which Johnny Clark entered to determine where the money went?

A. No, sir; we did not.

Q. Who owned that house?

A. I don't know. Who was living there?

Q. Pardon?

A. Do you mean who was living there, or who owned it?

Q. Who owned the house—do you know. [50] that?

A. No, sir; I don't.

Q. Describe the house.

A. It is a duplex, sitting on the southwest corner, 22nd and East Thomas, and it has a semi-parking place for cars in the back, and a walk or driveway going through there, and there is a long

(Testimony of Chester G. Sprinkle.)

porch—I believe it runs almost the full length of the back—and there are two entrances there.

Q. What entrance did Johnny Clark enter?

A. He entered the south entrance.

Q. You don't know who owned that part of the premises?

A. I know who lived there; I don't know who owned them.

Q. Do you know who the lessee was of that place? A. Yes, sir; I believe I do.

Q. Who was that?

A. A party by the name of Bernice Fitzgerald.

Q. Bernice Fitzgerald? A. Yes, sir.

Q. Is Bernice Fitzgerald a known narcotics addict, or pedlar, according to your record or experience?

A. Convicted narcotic pedlar or addict? She has been under investigation for quite some time.

Q. I am asking from your experience, ten years with the Seattle Police Department, and two and one-half years with [51] the Federal Narcotics Bureau, whether or not you would describe Bernice Fitzgerald as a pedlar of narcotics in this community? A. Yes, sir; I believe so.

Q. In other words, you mean by that that she deals in narcotics, and buys and sells and distributes and dispenses?

A. Well, that is very undetermined.

Q. What do you mean, it is undetermined?

First you say you believe so, and now you say it is undetermined.

A. We have suspicions she has, yet we have

(Testimony of Chester G. Sprinkle.)

never come right down with the evidence. She is a suspected narcotic associate.

Q. Is she an addict? A. I don't know.

Q. Have you ever had her in custody?

A. No, sir.

Q. Did you ever talk with her?

A. No, I have never talked with her.

Q. You say your "suspicions" led you to believe she is a pedlar or dealer in narcotics?

A. I wouldn't say a suspected pedlar. She was an associate; I believe she was using, but I don't know for sure.

Q. Now, who else occupied that house besides Bernice [52] Fitzgerald as a permanent resident?

A. I don't know, other than the Oriental party I saw come out.

Q. Can you tell me who the Oriental party was?

A. Can I tell you who he was?

Q. Yes. A. I don't know, sir.

Q. When you say Oriental party, was it Japanese or Chinese?

A. It just looked like a small Japanese fellow. He could have been Chinese.

Q. Had you seen him there before?

A. No; I haven't.

Q. Do you know anything about his activities?

A. No.

Q. So far as narcotics are concerned?

A. No, sir.

Q. What? A. No; I don't.

Q. Who else was there besides the Japanese, or Chinese, and Mrs. Fitzgerald?

(Testimony of Chester G. Sprinkle.)

A. I have no idea.

Q. How many rooms in the house?

A. I don't know that.

Q. You don't know anything about the interior at all? [53]

A. No, sir; I have never been in there.

Q. You don't know who else had access to the house, as far as living there, other than the Japanese and Bernice Fitzgerald, is that correct?

A. And Mr. Blassingame.

Q. You say Mr. Blassingame had access to the house? A. Yes, sir.

Q. What made you think he had access to the house?

A. We have seen him several times. I have seen him myself come and go in the place.

Q. I thought you told me a few minutes ago you had not seen the house before?

A. I have seen the house on numerous occasions.

Q. Who else did you see going to and from the house besides the Japanese, Bernice Fitzgerald, and Blassingame?

A. I can't recall who else I have seen coming and going, other than Miss Fitzgerald and Mr. Blassingame. I don't believe I have ever seen anybody else but those two. Whether they had somebody with them, I can't recall.

Q. But you have seen other people go in there—is that right? A. I don't believe so.

Q. You don't?

A. I don't believe I have; no, sir. [54]

(Testimony of Chester G. Sprinkle.)

Q. How often were you around that house prior to May 29, 1956?

A. Oh, possibly six or seven, and maybe eight or nine times. We drifted by and maybe stopped a few moments. We checked to see what cars were in the vicinity.

Q. But you never went in the house, or looked at the house, or determined who else was in the house? A. No, sir.

Q. Do you know on this evening in question who had been in the house prior to your arrival?

A. No; I have no idea.

Q. Do you know who was in the house at the time Johnny Clark entered this house on the evening in question, May 29, 1956?

A. Other than Mr. Blassingame, no, sir.

Q. You don't know if anybody else was there?

A. No, sir.

Q. I thought you testified on direct examination that Mrs. Fitzgerald entered the house?

A. She entered after Mr. Clark went in.

Q. That is what I said—who else was in the house—do you know?

A. I beg your pardon. Mrs. Fitzgerald entered a few moments after.

Q. And the Japanese? [55]

A. The Japanese wasn't in that part of the house.

Q. He stood on the porch?

A. He came out of the other entrance.

(Testimony of Chester G. Sprinkle.)

Q. Do you know if anybody else was in that house that night? A. No, sir.

Q. Do you know of your own personal knowledge who else was in that house besides, now, Mr. Clark, Miss Fitzgerald, and when you saw Mr. Blassingame step out the door?

A. I don't know who else was in there.

Q. Possibly there could have been other people in the house? A. Yes, sir.

Q. Are you familiar what entrances there are in this particular unit that we are discussing?

A. No; I am not.

Q. What? A. No; I am not.

Q. Do you know whether there is another entrance to this particular unit?

A. Excuse me. Another outside entrance?

Q. Yes.

A. I don't know. Actually, I can't even remember whether there is a front entrance to it, or whether they all used the rear entrance. [56]

Q. You don't know whether there is a rear entrance or front entrance?

A. I know there is a rear entrance.

Q. Do you know whether there is a front entrance?

A. I believe there is, but I just can't possibly place it right now. We have always observed the back.

Q. Did you ever observe the front entrance?

A. No, sir.

(Testimony of Chester G. Sprinkle.)

Q. Did you observe the front entrance May 29, 1956? A. No; I did not.

Q. Do you know whether or not any search of that house was made that evening?

A. Not to my knowledge.

Q. After Mr. Clark came out of the house?

A. Not to my knowledge.

Q. Was Mr. Blassingame placed under arrest that night? A. No; he was not.

Q. You didn't go in and arrest him?

A. No, sir.

Q. Do you know when Mr. Blassingame was arrested in relation to the incident that occurred May 29, 1956? A. It was some time later.

Q. What do you mean by "some time later"?

A. Possibly one and one-half months later. [57]

Q. One and one-half months later?

A. Maybe one month; pretty close to that.

Q. Did you hire Mr. Clark, or did the Government agents hire Mr. Clark?

A. We do not hire anybody to assist us.

Q. You mean "we," talking about the Seattle Police Department? Is that correct?

A. Yes, sir.

Q. Do you know what arrangements were made with Mr. Clark, so far as his employment with the Federal Government is concerned that evening?

A. What, sir?

Q. Do you know, that evening in question, what arrangements were made with Mr. Clark, so far as he being in their employ? A. Yes, sir; I do.

Q. What was that?

(Testimony of Chester G. Sprinkle.)

A. They were notified by Detective Waitt and myself, and we had furnished them with the information, and were going to get Johnny Clark for the purpose of buying narcotics.

Q. I am asking what the Government paid Johnny Clark, or what were the terms and conditions of the employment of Johnny Clark by the Federal Government on the evening in question?

A. I don't know of any additional [58] compensation—are you talking about——

Q. I am talking about compensation. What do you mean by “additional compensation”?

A. Well, I guess I just don't understand you.

Q. All right. I will try and rephrase it. You tell me that the Seattle Police Department never employs an informer; is that correct?

A. Yes, sir.

Q. And you tell me that the Federal Government does employ informers on these cases; is that correct?

A. I don't know.

Q. Let me ask you this question: Was Johnny Clark employed by the Federal Government on May 29, 1956?

A. By the Federal Government as an employee?

Q. As an informer, rather?

A. He was being used as a special employee that night.

Q. Do you know the terms and consideration passed between the Government and Johnny Clark for his services as an informer?

(Testimony of Chester G. Sprinkle.)

A. I don't believe they made him any terms or consideration.

Q. Pardon?

A. I don't believe the Government made Johnny Clark [59] any terms or consideration.

Q. You say he received no remuneration?

A. Not that I know of, no, sir.

Q. Or any threats or promises made to Johnny Clark?

A. Not from the Government's side, I don't believe.

Q. From your side? A. Yes, sir.

Q. What threats or promises were made from your side?

A. No threats were ever used against Johnny Clark.

Q. You said they were. Now you say they weren't.

A. No threats were used against Johnny Clark.

Q. What promises by your division to Johnny Clark?

A. No promises were made to Mr. Clark either by our side, by the city side.

Q. What about the Federal Government's side?

A. I don't know what they may have told him. I may have misunderstood you. I mean, an arrangement was made between Mr. Clark and Detective Waitt and myself.

Q. I understand that. I am asking what remuneration Mr. Clark was to receive for the services rendered?

(Testimony of Chester G. Sprinkle.)

A. None at all, so far as we are concerned.

Q. So far as the Government is concerned, do you know that? A. I don't know. [60]

Q. Was anything ever said by you or persons under your supervision or by the Federal agents, so far as you are concerned, whereby Johnny Clark was to perform services for your division and the Federal Government division and on the promise that he would not have his parole revoked?

A. Not on a promise; no, sir.

Q. What was it then?

A. We would try to help that situation, but we cannot promise.

Q. You would try to help the situation; will you explain what the situation was?

A. Some time prior to this, approximately one month, possibly six weeks, during an investigation, we took Johnny Clark out of a place and we lodged him in the city jail.

A quantity of narcotics were found in the place, and that is when we began our talking with Johnny Clark. He agreed to assist us in making some purchases of evidence of narcotics, or narcotics for evidence.

Q. In exchange for what, now, is what we are getting at? How were you helping the situation?

A. In exchange for consideration for the plight that he was in.

Q. Did you promise him that you would do everything in your power to see that he wasn't sent

(Testimony of Chester G. Sprinkle.)

back to McNeill [61] Island or that his parole was not lifted? A. Yes, sir.

Q. When did you make those promises?

A. That was about the time we had him in the city jail.

Q. And did you keep that promise?

A. To the extent that we had told Johnny we would try; that if he would go down and if he would try and stay away from narcotics, and be a good citizen.

Q. Are you aware that in September, 1956, that an attempt was made to revoke Johnny Clark's parole in the United States Federal Court?

A. No, sir; I am not.

Q. You are not aware of that? A. No, sir.

Q. You have no personal knowledge or personal observation of any transaction that took place within that duplex on the night of May 29, 1956?

A. Transaction inside?

Q. Yes. A. No; I haven't.

Q. You have no personal knowledge of personal observation as to from whom Johnny Clark obtained the alleged narcotics?

A. No, sir; no personal knowledge.

Q. And no personal observation? [62]

A. No, sir.

(Whereupon, there was a brief pause.)

Q. After Johnny Clark returned from the home, what did you do with him then—turn him loose?

A. No, we—he got in the Government car, and

(Testimony of Chester G. Sprinkle.)

we drove directly to the Federal Office Building—the Narcotics—or the United States Courthouse here, in the Narcotics Office, downstairs.

Q. Did you take him into the building, or not?

A. Yes, sir.

Q. Did you go in with him? A. Yes, I did.

The Court: Can you finish this up, Mr. Chavelle?

Mr. Chavelle: No, I haven't.

The Court: I say, can you?

Mr. Chavelle: Yes, I can finish in about five minutes.

The Court: All right; I thought we would finish, if you are about through. Do you have any redirect, Mr. Roberts?

Mr. Roberts: I have about three questions.

The Court: Well, we will recess until 1:45.

Members of the jury: Bear in mind the admonition given you on the occasion of the recess earlier this morning, and heed it on this occasion.

Be here a few minutes before 1:45 o'clock.

You may now be excused, and the court will remain in session while you leave.

(Whereupon, the jury retired from the court room.)

The Court: Court will recess until 1:45.

(Whereupon, at 12:09 o'clock p.m., a recess was had in the within-entitled and numbered cause until 1:46 o'clock p.m., January 15, 1957, at which time, counsel heretofore noted, includ-

(Testimony of Chester G. Sprinkle.)

ing Mr. Kosher, being present, the following proceedings were had, to wit): [64]

Afternoon Session

The Court: In the case on trial, we are ready to proceed, are we?

We will call the jury.

Are these witnesses, Mr. Chavelle?

Mr. Chavelle: No, your Honor.

The Court: With both counsel here, I assume if one counsel starts with a witness, the same counsel will finish.

Mr. Chavelle: Yes, Your Honor, that is right.

(Whereupon the jury was returned to the courtroom.)

The Court: You may be seated.

It is stipulated that the jury and the defendant are present in the court room?

Mr. Roberts: So stipulated.

The Court: Mr. Chavelle; Mr. Kosher—you stipulate?

Mr. Chavelle: Yes, Your Honor.

The Court: All right. You may proceed with cross-examination.

Mr. Chavelle: Yes, Your Honor.

Q. (By Mr. Chavelle): Mr. Sprinkle, directing your attention once again to the person referred to by you as Bernice Fitzgerald, [65] whom you saw going into these premises on the 19th day of—29th

(Testimony of Chester G. Sprinkle.)

day of May, 1956, do you know anything about her activities as a prostitute? A. No, sir.

(Whereupon, the witness coughed.)

A. (Continuing): Excuse me. I don't hear too well. I know her as "Chinky," and I just recently found out her name.

Q. What alias does she use?

A. "Chincky."

Q. Chinky; now directing your attention to June 19th, I believe you stated on direct examination that Johnny Clark remained in the car with you?

A. At what time, Mr. Chavelle?

Q. When you first contacted him at 7th and Madison, or 7th and Cherry?

A. Yes, that is correct.

Q. Now, did you go any place from that location after you met Johnny Clark?

A. Not until the other officers arrived back there.

Q. And then where did you go?

A. We went down to the Seattle Police Department, Narcotics Room.

Q. And for what purpose?

A. To examine the Exhibit No. 2, that I [66] identified here.

Q. For fingerprints?

A. That is one part of it; to check the fingerprints, and also to mark it for identification.

Q. And you examined it for fingerprints?

A. I didn't, myself.

Q. Was it done in your presence?

(Testimony of Chester G. Sprinkle.)

A. Yes, it was.

Q. Were any fingerprints obtained from Plaintiff's Exhibit No. 2?

A. I don't believe any usable prints were obtained.

Q. Were there prints obtained or not?

A. I don't remember, Mr. Chavelle. Somebody else handling the printing of it.

Q. You said there was an endeavor to obtain fingerprints from Plaintiff's Exhibit No. 2, and it was performed in your presence? A. Yes.

Q. Now, I am asking you, if you were there, whether or not you know if any fingerprints were obtained?

A. No; no familiar prints were obtained.

Q. All right.

Mr. Chavelle: That answers my question. Thank you. I believe that is all, sir. [67]

Redirect Examination

By Mr. Roberts:

Q. Mr. Sprinkle, directing your attention back to the time that Johnny Clark was frisked or examined on May 29th, before he went to the house at 23rd and Thomas, you testified that Narcotic Agent Gooder had, as his special duty, or his particular duty, the task of frisking or examining the person of Johnny Clark; is that correct?

A. That is right.

Q. Did you have any specific task or purpose to accomplish at that time? A. Yes.

(Testimony of Chester G. Sprinkle.)

Q. Tell the jury what you were doing in addition to watching this?

Mr. Chavelle: This has all been gone into; not proper redirect. He testified on direct examination what his duties were that night.

The Court: Insofar as it may explain his responsibility other than the observing of the search of the person of Clark, I think it may be admissible, limited only to that.

Mr. Roberts: That is the only purpose of the question, Your Honor.

A. Detective Waitt and I were experimenting with a new type of recording device which we were placing on Johnny [68] Clark at that time, and we had to place it on him by removing his shirt and coat, and we were busy doing this, and strapping the machine on, and getting it ready to go.

Q. (By Mr. Roberts): Were you also instructing him on how to use this device?

A. Yes, sir..

Q. Was the device successful that evening?

A. No, it was not. There was a mechanical difficulty in it that made the recording of no value.

Q. Had you ever used such a device before?

A. That was——

Mr. Chavelle: I will object, whether it was used before; not material.

The Court: Objection sustained.

Q. (By Mr. Roberts): What authority do you have, Officer Sprinkler—or, pardon me, Officer Sprinkle—to promise individuals like Johnny Clark

(Testimony of Chester G. Sprinkle.)

that their probation will not be revoked if they cooperate with you?

Mr. Chavelle: I don't think that is proper re-direct examination, Your Honor.

The Court: Objection sustained.

Mr. Roberts: I believe that the inquiry is pertinent, Your Honor. [69]

The Court: The objection is sustained.

Q. (By Mr. Roberts, continuing): Describe in detail, if you recall, the promise, if any, you made or anyone in your presence made to Clark, to cooperate in this particular case?

Mr. Chavelle: Object to that as not proper re-direct examination. He already testified on direct examination he never made such a promise, or had no authority to make such a promise, and his Department never made such promises, or employed informers.

It is certainly outside the scope.

The Court: He indicated he had told this man that he would further his interests with respect to continuation of probation.

Isn't that in substance what he testified?

Mr. Chavelle: That is right.

The Court: Insofar as that may be a promise, as to that factor or that issue, I think he might testify.

The Witness: Is it all right to answer that?

The Court: Yes; related solely to that question.

A. The only thing we told Johnny was that we

(Testimony of Chester G. Sprinkle.)

could not, as we tell all the people we work with, that we cannot——

Mr. Chavelle (Interposing): I am going [70] to object to this as hearsay, conversation with Johnny. He can say in substance what was done, but not the conversation not in the presence of the defendant here.

The Court: It was opened up on cross-examination. Objection overruled.

A. (Continuing): We told Johnny that we can't promise him anything, and that the main consideration we could show him is that if he would assist us in any way whatsoever, that we could call it to the attention of the respective prosecuting attorneys of the courts for any consideration they may give him.

Mr. Roberts: I have no further questions.

Mr. Chavelle: That is all, sir.

(Witness excused.)

Mr. Roberts: Mr. Gooder.

The Court: Do you want this witness excused?

Mr. Roberts: Yes, if Your Honor please.

The Court: Mr. Chavelle, any reason to hold him under subpoena?

Mr. Chavelle: No, not at all.

Mr. Roberts: May I also request that Mr. Ringstrom be officially excused?

Mr. Chavelle: No objection to that, Your [71] Honor.

The Court: All right. They may both be excused

from further attendance.

Mr. Roberts: Mr. Gooder, please. [72]

LAVERN E. GOODER

upon being called as a witness for and on behalf of the plaintiff, upon being first duly sworn, testified as follows:

The Clerk: Will you state your full name and spell your last name, please?

The Witness: Lavern E. Gooder—G-o-o-d-e-r (spelling).

The Clerk: Lavern, L-a-v-e-r-n? (Spelling.)

The Witness: Yes.

Direct Examination

By Mr. Roberts:

Q. Do you go by any other name, other than Lavern E. Gooder?

A. Yes, I am commonly known by my nickname, "Sam."

Q. Where do you reside, Mr. Gooder?

A. 142 East 166th, Seattle Washington.

Q. What is your occupation?

A. Federal Narcotics Agent.

Q. Attached to what office?

A. The Seattle office.

Q. And were you so employed during the month of May, 1956? A. Yes, I was.

Q. Directing your attention to on or about May 29th, [73] 1956, state whether or not you had any dealings with an individual known by the name of Johnny Clark? A. Yes, I did.

Q. Will you describe the circumstances leading

(Testimony of Lavern E. Gooder.)

to a meeting with Clark that night or that day?

A. Myself and Agent Fahey met in the 7th and Madison parking lot with other narcotics agents and Seattle narcotic officers from the Seattle Police Department, and we had some conversations there, and then we immediately drove to 19th and East Roy.

We arrived there. Mr. Clark entered the outside phone booth, and Mr. Sprinkle, Detective Sprinkle, also went into the phone booth with him there.

A phone call was made.

From this point Mr. Clark got into the Government automobile, which I was driving, with myself and Detectives Waitt and Sprinkle.

We drove to 21st and East Roy, where I stopped and got out of the car, and I entered the back seat with Detective Waitt and Mr. Clark, and I proceeded to search Mr. Clark's person, his clothes and so forth, for any concealed narcotics.

After the search, no narcotics were found.

I furnished him with \$25.00 Government-advanced funds for which he had signed a receipt previous to this time. [74]

Q. Pardon me. Let me interrupt you and ask you what you mean by Government advance funds?

A. It is a receipt on which we list the serial numbers of all money which is expended for evidence purposes.

It has a two-fold purpose of, later during any arrest and so forth, we check the monies found on any of the defendants to see if it checks with our

(Testimony of Lavern E. Gooder.)

serial numbers that were used in previous purchases.

Q. You use it for evidence, then?

A. Yes. And also it is more or less of an accounting of all of the money that is spent for evidence purposes.

Q. In accounting to whom and by whom?

A. It is actually a sworn statement, which we return to our District Supervisor, who accounts for all the money to the Congress of the United States.

Q. Is that part of your duty, to account for such funds? A. Yes, it is.

Q. Now, then, you say you searched the person of Johnny Clark? A. Yes.

Q. Let me interrupt you here and ask you, who is Johnny Clark?

A. He is a special employee of the Bureau of Narcotics at that time. [75]

Q. And what do you mean by special employee?

A. He was assisting the Government in making various narcotics cases.

Q. Does that mean he is a stool piegon or informer? A. More or less.

Q. Is he a narcotic addict himself?

Mr. Chavelle: I object to that, Your Honor; that—

Mr. Roberts: I will withdraw the question.

Q. (By Mr. Roberts, continuing): After searching Johnny Clark, and giving him his \$25.00, what did you then do?

A. I then returned to the driver's seat of the automobile and drove to 22nd Avenue and parked just south of East Thomas.

(Testimony of Lavern E. Gooder.)

Q. Then what happened?

A. At this point, approximately 9:40, or shortly before, Johnny Clark left the Government automobile, followed by Detective Sprinkle.

I observed him walk north on 22nd to East Thomas, and on East Thomas, he turned east and disappeared from my view.

Q. What then happened?

A. We waited until approximately 10:00 p.m., at which time Mr. Clark reappeared, walking on East Thomas, and [76] he turned down 22nd and returned to the Government automobile.

Q. And then what did you do?

A. He surrendered to me, Mr. Clark surrendered to me, a small, white paper bindle.

I had him place his initials on the bindle, after which I initialed it, and also Detectives Waitt and Sprinkle.

Mr. Roberts: May I see Plaintiff's Exhibit Number 1?

(Whereupon, exhibit was handed to counsel by the Clerk.)

Q. (By Mr. Roberts): I will ask you, Mr. Gooder, to examine the contents of Plaintiffs Exhibit No. 1, and state what it is, if you know?

A. Yes, this is the bindle made from what appears to be newsprint from a slick magazine, which was given to me on May 29, 1956, by Johnny Clark, at approximately 10:00 o'clock p.m.

Q. And you said you initialed it at that time?

(Testimony of Lavern E. Gooder.)

A. Yes, I did.

Q. Who else, if anyone else, also initialed it in your presence?

A. I observed Johnny Clark, and also Detectives Waitt and Sprinkle, at that time. [77]

Q. Now, do you know where Detective Waitt is today?

A. Yes, I believe he is out in the witness room.

Q. Available as a witness? A. Yes.

Q. He remained with you in the automobile?

A. Yes.

Q. While Clark was gone—is that correct?

A. Yes, he did.

Q. Now, after receiving this bindle back from Clark, what then did you do?

A. As I recall, we drove a few blocks away from the immediate area, where we again stopped, and while the detectives were removing some recording gear from Johnny Clark's person, I again went through his pockets, and so forth, searching for the \$25.00 in Government advance funds, which I did not find.

Q. Which you did not find.

Concerning the bindle which you received from Clark, what did you do with that?

A. We returned to the Narcotics Office in the—in this building, the Court House, and the bindle was also initialed by Agent Fahey, and it was then decided that we should attempt to raise fingerprints on it, and lock it in my desk drawer, the desk to which I have the only key in my office; and on the

(Testimony of Lavern E. Gooder.)

31st of May—the 30th was a holiday—the 30th of May it was taken to the Police [78] Laboratory, and checked for fingerprints, and I then carried it to the United States chemist, where it was sealed in the presence of Agent Fahey, and turned over to the custody of the United States chemist, Mr. Ringstrom.

Q. Will you examine the envelope, Plaintiff's Exhibit No. 1, and state whether or not you recognize any of the writing on it?

A. Yes; this is all my writing.

Q. And do you recognize any other writing on it?

A. This is also my writing here.

Q. On the reverse side?

A. On the reverse side.

Q. And is there any other writing that you recognize?

A. I believe this writing here is Agent Fahey's writing.

Q. Well, do you know it is; have you ever seen his handwriting?

A. Yes, I have; and I also witnessed him write those words.

Q. And did you lock and seal this envelope before delivering it to the chemist?

A. Yes. I also forgot to mention I performed a Marquis reagent test on the contents of the bundle.

Q. What is the Marquis test?

A. It is a test which includes hydrochloride [79] acid and formaldehyde, in which the presence of

(Testimony of Lavern E. Gooder.)

opium alkaloids gives a positive reaction, or a cherry red color.

Q. What was the result of your test in this case?

A. Positive reaction for opium alkaloids, in this case heroin.

Q. In this case heroin, you say? A. Yes.

Q. And when did you deliver it to the chemist?

A. On May 31, 1956.

Mr. Roberts: I have no further questions.

Cross-Examination

By Mr. Chavelle:

Q. Directing your attention to the location on 19th and East Roy Street, Mr. Gooder, did you have anything to do with witnessing the telephone conversation itself? A. No, I did not.

Q. Now, after you left that location, you said you went where?

A. Approximately two blocks east on East Roy, to about 21st.

Q. And you say you searched Johnny Clark at that time? A. Yes.

Q. By "search," do you mean you went through his pockets? [80]

A. I went through his pockets, his sox and shoes. As I recall, as the detectives were putting on the recording device, his shirt was off and his coat was off, and actually the only thing he had on was his undershirt, and I checked under his arms—a thorough search.

(Testimony of Lavern E. Gooder.)

Q. Who witnessed that?

A. Detective Waitt, and I believe Detective Sprinkle witnessed part of it, although he was busy with the recording gear.

Q. He was present at the time, and all the time?

A. Yes.

Q. Detective Sprinkle? A. Yes.

Q. What remuneration had you promised Mr. Clark to act as a special employee, or informer, or stool pigeon? A. Pardon?

Q. What remuneration had you arranged for Johnny Clark, who has been described as a stool pigeon and informer here?

A. In previous conversation with Mr. Clark, which I had no part of, but I was there—I was there, I was present—it was brought out that any assistance that we could be, in, I believe it was some type of case pending against him.

Q. What type of case was that. [81]

A. I am not sure. I believe it was some type of murder case.

Q. Murder case? A. Murder.

Q. Murder?

A. Murder, I believe, yes. I believe someone told him, I don't know who, that whoever would be handling the case would be told of whatever he'd done to assist the Government. That is the only thing I know.

Q. That the Government would assist him in this murder charge, is that right?

A. I am not sure. As I say, there was some type

(Testimony of Lavern E. Gooder.)

of case pending against him. I don't know whether there was another case or not.

Q. In return for the service that he might render your Department, Bureau of Narcotics, that someone in your Department would speak to the prosecuting officials pertaining to this murder charge under which Johnny Clark was charged, to assist him; is that right? A. I believe so.

Q. Do you know what assistance was rendered?

A. No, I do not.

Q. Who would know that?

A. I don't know.

Q. Who is in charge of your Department? [82]

A. Mr. Crisler.

Q. (Continuing): That handles those matters?

A. Well, Mr. Crisler is in charge of our Department.

Q. Who would be the man who would be instrumental in speaking to prosecuting officials to help Johnny Clark in connection with any charge which he might be facing?

A. I imagine it would be Mr. Crisler.

Q. Do you know who actually would carry out such a promise of such aid or assistance to Johnny Clark—what individual? A. No, I do not.

Q. You think it might be Mr. Crisler?

A. It is possible, yes.

Q. Was there also some question of Johnny Clark in connection with the assistance he might render your Department that you would try to see that parole was not revoked?

(Testimony of Lavern E. Gooder.)

A. Not while in my presence, no.

Q. Did you ever hear of such a conversation?

A. No, I did not.

Q. Do you know whether or not any attempts, subsequent to May 29, or June 19, 1956, were made to revoke his parole?

A. Yes, I believe there was an attempt.

Q. What connection did you have with that attempt?

A. Let me think. There was an affidavit, I believe, [83] that was filled out by Agent Fahey and myself regarding conversations we had had with Mr. Clark during May and June, 1956, having to do with his addiction, I believe.

Q. That was in support of a petition to revoke his parole and send him back to McNeill Island, is that correct?

A. Yes, I believe so.

Q. Do you know what was done with those affidavits after you executed them?

A. I believe they were turned over to the Probation Office.

Q. Do you know the result of that hearing, if there were a hearing?

A. Yes, I was in court the day of the hearing.

Q. Before what judge was that?

A. Judge Boldt, I believe.

Q. Judge Bowen?

A. Bowen, yes, I believe it was.

Q. What was the result of that hearing?

A. They didn't revoke his parole.

Q. They did not? A. No.

(Testimony of Lavern E. Gooder.)

Q. Did you testify that day in court?

A. No, I did not.

Q. Did you ever retrieve the \$25.00 Government funds? Do you know where it is now? [84]

A. No, I do not. It was never found.

Q. Did you make any search for it?

A. On Mr. Clark, you mean?

Q. Anyone.

A. I searched Mr. Clark after he had surrendered the bindle of heroin to me.

Q. Did you search the premises where he allegedly went?

A. Not at that time, no; not at that time.

Q. You didn't search the premises? A. No.

Q. What do you mean by "not at that time"?
Did you ever search the premises? A. No.

Q. You never recovered the marked money, right? A. Right.

Q. Directing your attention again to the May 29, 1956, date, do you know who the occupants of the house in which Mr. Clark allegedly went were that evening?

A. I don't know who was in the house, no.

Q. Do you know during the time that Mr. Clark was in the house who came from the house or went into the house? A. No.

Q. Do you know whether any of the officers entered the premises that evening? [85]

A. Any of the officers entered the premises?

Q. Yes. A. No, I do not.

(Testimony of Lavern E. Gooder.)

Q. Well, I will ask you, do you know whether or not any officers did actually enter the premises that evening?

A. I don't believe any of our officers entered the premises, no.

Q. What do you mean by "our officers"?

A. The Seattle Police Narcotic officers and the Narcotic Agents.

Q. Do you know of anyone else who went in the premises that evening? A. Yes, Johnny Clark.

Q. Any officers of any type or description?

A. I don't believe so, no.

Q. And after Johnny Clark returned, and when he delivered to you the Plaintiff's Exhibit No. 1, was any arrest made that evening?

A. No arrest was made.

Q. When was the arrest made in this case, in relation to the alleged activities occurring on May 29, 1956? A. September 27, I believe.

Q. September 27th?

A. I am not too sure of that date.

Q. And from May 29, 1956, until September 27, 1956, [86] you had seen Mr. Blassingame in the City of Seattle, had you not? A. Yes.

Q. And you did not arrest him until September 27, 1956? A. Correct.

Q. He was available for arrest at all times during that period from May 29, 1956, until September, was he not, so far as you know?

A. So far as I know of my own knowledge. I only saw him once or twice during that period.

(Testimony of Lavern E. Gooder.)

Q. But he was in Seattle during that period?

A. During the times I saw him.

Q. And that was during the summer of 1956?

A. Yes.

Q. Do you know who the lessee or the owner of the premises were in relation to the activities that took place on May 29, 1956?

A. I don't know who owned the building. I know who was supposed to be living there.

Q. Who was the lessee; do you know that?

A. A woman by the name of Bernice Fitzgerald.

Q. Bernice Fitzgerald?

A. Better known as "Chinky Johnson" to us.

Q. "Chinky Johnson"—that is her alias. Do you [87] know what her occupation is, or what she does for a living, from your acquaintance with her?

A. No, I do not.

Q. Do you know whether she deals in or peddles narcotics?

A. No, I do not.

Q. Do you know whether she has any activities in connection with narcotics?

A. I don't know.

Q. Do you have any suspicions along that line?

A. We have our suspicions.

Q. You have your suspicions based upon her association with narcotics addicts and peddlers?

A. Yes.

Q. Do you know whether or not she is a prostitute?

A. I don't know.

Q. Do you know anyone else who was in that house—living in that house?

A. No, I don't.

(Testimony of Lavern E. Gooder.)

Q. Do you know the Oriental that was there that night? A. No, I don't.

Q. Are you familiar with the physical set-up of the house, and the number of rooms, and the different entrances, and what not? [88]

A. The different entrances, yes; the interior of the house, no.

Q. How many entrances are there?

A. Two, I believe.

Q. A back and a front entrance?

A. Yes.

Q. Do you know what entrance Johnny Clark used the evening in question?

A. The back entrance.

Q. The back entrance; do you know whether or not any—how many people went in, and from the house that night in question?

A. No, I don't.

Q. Did you obtain any fingerprints on Plaintiff's Exhibit No. 1? A. No.

Q. Although you attempted to?

A. The Seattle Police chemist did, yes.

Q. Unable to obtain any fingerprints?

A. Yes.

Q. Did you personally witness the transfer of Plaintiff's Exhibit No. 1 from one person to another, other than Johnny Clark, the evening in question? A. No, I did not.

Q. At the time Johnny Clark was in the home, do you [89] know who was in the home with him at that time? A. No, I don't.

(Testimony of Lavern E. Gooder.)

Mr. Chavelle: I believe that that is all, sir.

Mr. Roberts: I have no further questions, your Honor.

May this witness also be excused, your Honor?

The Court: Any reason to hold him?

Mr. Chavelle: None whatsoever, your Honor.

The Court: You may be excused from further attendance, Mr. Gooder.

Mr. Gooder: Thank you.

(Witness excused.)

Mr. Roberts: Mr. Fahey. [90]

CHARLES FAHEY

upon being called as a witness for and on behalf of the plaintiff, and upon being first duly sworn, testified as follows:

Direct Examination

By Mr. Roberts:

Q. Would you please state your full name?

A. Charles Fahey, F-a-h-e-y (spelling).

Q. Where do you live, Mr. Fahey?

A. 4011-142nd in Southeast Bellevue.

Q. What is your occupation?

A. Treasury Agent, Narcotics, stationed at Seattle.

Q. How long have you been a Treasury Agent for the Bureau of Narcotics?

A. Since August 23, 1943.

Q. And how long have you been stationed here in Seattle?

(Testimony of Charles Fahey.)

A. Off and on since January, 1950.

Q. And were you so employed in the Seattle office during the months of May and June of the year 1956?

A. Yes, sir, I was.

Q. Directing your attention to on or about May 29, 1956, state whether or not you met with a man by the name of Johnny Clark? [91]

A. Yes, sir, I did.

Q. Would you describe the circumstances leading to that meeting?

A. Some other officers and I waited in the parking lot at 7th and Madison, and three Seattle detectives arrived with Johnny Clark, and I met him there.

Q. And then what did you do?

A. I went in the police car to our garage and picked up the Cadillac, a Government car, and with Detectives Chan Kirschner and Bill Henaby, I remet the officers, the other officers and Johnny Clark, at 19th and East Roy.

Q. You say the Government car is a Cadillac?

A. Yes, sir.

Q. Why is that?

Mr. Chavelle: I object to that as not material.

The Court: Objection sustained.

Mr. Roberts: They might be curious, your Honor.

Q. (By Mr. Roberts, continuing): All right. Where did you meet, once again, with the Seattle Police Department officers?

(Testimony of Charles Fahey.)

A. At 19th and East Roy in Seattle, Washington.

Q. And what happened there?

A. Johnny Clark made a telephone call in the public [92] phone booth. Detective Sprinkle was in the booth. I was outside. I had Mr. Clark sign a receipt. The detectives, Kirschner and Henaby, and I, left and parked our car and drove away from there and parked the car at 22nd and East John.

Q. Who was with you in your car?

A. Detectives Chan Kirschner and Bill Henaby, of the Seattle Police Narcotics Squad.

Q. And where did you go in your car?

A. To 22nd and East John.

Q. And what did you do there?

A. We parked and took up a spot where we could see the apartment where Sam Blassingame was living.

Q. All right. Where is that apartment, if you know?

A. Oh, that address is the corner of 23rd and John; the address is right out of my mind, the street address.

Q. Well, that is immaterial.

What was the position of your car with relation to the apartment where Sam Blassingame was?

A. We were on the northwest corner of 22nd and John. We are about the distance of one-half of a city, downtown city block, from the rear entrance to this apartment.

Q. And did you have a view of the rear entrance

(Testimony of Charles Fahey.)

to the apartment? A. Yes, sir, we did.

Q. And what happened, if you know, to Johnny Clark [93] and the other officers with him?

A. He went with Agent Gooder and Detectives Sprinkle and Waitt.

Q. And did you see them again?

A. Yes, I did.

Q. Well, tell the jury what you observed in that regard?

A. About, oh, around twenty minutes to ten that evening the Government Ford with Agent Gooder and Detectives Sprinkle and Waitt and Johnny Clark arrived and parked ahead of us, which would be south of the intersection at 22nd and Thomas.

Johnny Clark and Detective Sprinkle walked toward the, Chinky Johnson's apartment, where Sam stayed. Clark went on direct to the back door.

Mr. Chavelle: I object to that. He is assuming something here, your Honor, and we object to the answer and move it be stricken, assuming Chinky Johnson's is the place he lives. It was not responsive to the original question.

The Court: Well, the portion of the answer, "where Sam stayed," may be stricken. Proceed.

A. (Continuing): He went down and entered the duplex, one of the duplex apartments.

Detective Sprinkle went down the middle of [94] the vacant lot and hid himself from my view.

Q. (By Mr. Roberts): Will you state whether or not you could observe Johnny Clark approaching the entrance to the apartment?

(Testimony of Charles Fahey.)

A. Yes, I could.

Q. Did you also observe Detective Sprinkle?

A. Yes, sir.

Q. Where was Sprinkle with relation to Clark when Clark was at the back door?

Mr. Chavelle: That is objected to as leading. He might ask what he saw.

Mr. Roberts: I will withdraw the question.

Q. (By Mr. Roberts, continuing): State what you observed as Clark approached the rear entrance to the building?

A. Detective Sprinkle separated and paralleled him going through the vacant lot, and perhaps twenty feet to the rear, and down in there some place Sprinkle squatted down, or disappeared from my view, in the grass.

Q. What did you observe about Clark?

A. Clark went to the back door, and I couldn't tell whether he knocked, or what. The door opened, and I could see Mr. Blassingame in the doorway, and then Clark entered.

Q. Then what happened? [95]

A. Oh, roughly five or ten minutes, a car drove by us that I recognized as Chinky Johnson's car, and parked at the alley. A woman got out and entered that same apartment, and was in there just a few minutes, and then left.

A couple of minutes after she left, in the neighboring apartment a man came out the back door and turned on a porch light and messed around the back porch some way, and left his lights on.

(Testimony of Charles Fahey.)

About ten o'clock the door opened. Mr. Blassingame stepped part way through the door and looked out and looked around and passed Johnny Clark out the door, and the door closed.

Q. How are you sure it was Sam Blassingame?

A. I could see him.

Q. Did you know Sam Blassingame at that time?

A. Yes, sir.

Q. How long had you known him prior to that time?

Mr. Chavelle: I will object to that; that is immaterial.

Mr. Roberts: Very well, your Honor; I will withdraw the question.

Q. (By Mr. Roberts, continuing): After Clark left the apartment, what then did you do?

A. After Clark left the apartment we rejoined the [96] officers and left the vicinity, and I drove the two detectives and myself to the Narcotics Office in this building.

Q. And what did you do there?

A. We took a statement; I reduced it to writing—a statement from Mr. Clark; and I believe at that time I marked some package of some heroin for identification.

Mr. Roberts: May the witness be shown Plaintiff's Exhibit No. 1?

Q. (By Mr. Roberts): I think it is in front of you. Will you examine the contents and state what it is, if you know?

A. This is the small packet of heroin that Agent

(Testimony of Charles Fahey.)

Gooder produced in our office when I rejoined him that night here in the Federal Narcotics Office.

Q. Is this what you just referred to as a packet of heroin? A. Yes, sir.

Q. How are you able to be definite about that?

A. I believe Agent Gooder and I made a routine field test, and I was also present with Mr. Gooder when this was delivered to Chemist Ringstrom.

Q. Did you make any writing to indicate you were present or had anything to do with it?

A. I marked this. It bears my initials, among others. [97]

Q. And on that envelope in which that brindle is contained, is there any writing that you recognize as your own?

A. Yes, there is, where I did write on that, and I do recognize it.

Q. Very well. Now, inviting your attention to on or about June 19, 1956, state whether or not you met again with Johnny Clark on or about that time?

A. Yes, sir; I did, at a few minutes past nine p.m. here at 7th and Madison.

Q. Describe the circumstances leading to that meeting?

A. We met first with Deputy Marshal James Clark, Narcotic Agent Lee Holt, and Narcotic Agent Charles Du Puis, at the parking lot at 7th and Madison. and we had an appointment a few minutes after nine.

Detectives Sprinkle and Kirschner and Henaby drove up with Johnny Clark and we met.

(Testimony of Charles Fahey.)

Q. Without relating any conversation that took place, if any, tell us what you then did?

A. We held a short conference and immediately Agent Du Puis, Chan Kirschner and I raced to the fire plug at 26th and East Thomas.

Q. Who is Agent Du Puis?

A. He is Narcotic Agent Charles F. Du [98] Puis.

Q. Is he a Federal or State officer?

A. Federal Narcotics, the same as myself.

Q. Who is Chan Kirschner?

A. A Seattle City Detective, stationed with the Narcotic Squad.

Q. You stated you three individuals went where?

A. To the fireplug at 26th and East Thomas.

Q. And I will now ask you to describe the intersection at 26th and East Thomas.

A. Well, it is like what you might call a dog's leg. There are two roads that run together.

Q. What direction does 26th Avenue run?

A. 26th is north and south, and Thomas is, of course, east and west.

Q. All right. Does 26th Avenue proceed north through that intersection?

A. No. No, it dead-ends at Thomas. They both join. I don't know how to describe it.

Q. Does East Thomas run to the east of that intersection?

A. No, it ends at 26th.

Q. I want you to describe as best you can the actual physical relationship.

(Testimony of Charles Fahey.)

A. It makes a right angle. You drive north on 26th. It dead-ends at Thomas, which begins and runs east [99] from 26th.

Q. So that Thomas does not go through to the west? A. No, it makes an "L."

Q. What did you observe when you looked to the west of that intersection?

A. Looking west, you are looking directly into a brushy, wooded bank, with a long flight of stairs leading up to Madison.

Q. All right; what do you observe when you look to the east of East Thomas?

A. Looking east you are looking downhill on Thomas, kind of a long corner to the first house, to the first—to the driveway, beyond the house, perhaps fifty or sixty—forty or sixty feet; some place in there, down the hill.

Q. Now, locate, if you will, the fireplug that you referred to in this intersection.

A. The fire plug would be the inside corner of the "L," which would be the southeast corner of the intersection.

Q. Now, state what lights, if any, were in that general area?

A. There is a street light, but it was not burning. Your nearest light is from Madison where it has those large, brilliant street lights. I don't know what you call them.

It throws a bright, bluish——

Q. (Interposing): Fluorescent light? [100]

(Testimony of Charles Fahey.)

A. I think that is what you call them.

Q. Or sodium vapor?

A. Something like that; a new-style light.

Q. What was the degree of visibility at the time you arrived at that intersection?

A. It was clear, and just a bit chilly, as I recall.

Q. What did you do when you arrived at the fire plug?

A. Agent Du Puis was driving the De Soto and Agent Kirschner and I got out with a flashlight and searched around the fire plug.

Q. Describe what you were searching in?

A. The fire plug is in that, what is called the parking strip between the road, and the sidewalk, and there was grass, perhaps two feet high—high grass—untrampled then; searched thoroughly around the plug; searched widening a little bit from that area, and then went back and had a little talk with Du Puis, and backed the car out of view, and he grabbed his flashlight and joined us, and the three of us searched.

We found—we went back——

Mr. Chavelle (Interposing): There is no question before the witness now, your Honor.

The Witness: I beg your pardon?

Mr. Roberts: I am asking what he did. It [101] is a narrative statement.

A. (Continuing): We all went back to Du Puis' car and pulled around the corner and half way down the hill.

(Testimony of Charles Fahey.)

Q. (By Mr. Roberts): Down what hill?

A. That is Thomas, that is on an incline.

Q. You traveled to the east, therefore?

A. Yes, sir; about three-quarters of a block.

Q. And then what did you do?

A. Du Puis pulled into the curb and cut his lights, and we were holding a little hurried conference, and Chan got out of the car, and we made a plan, and I am starting out and my coat is hung up on the ashtray or something, and Du Puis directed our attention back to the stairway and I see a man coming down the stairs. And Kirschner has already started to run, and I am behind him.

Q. What did you do?

A. We ran up the hill toward the man coming down the stairs. Kirschner is ahead fifteen or twenty feet, and I cut to the left in the yard, and I am in the parking strip in the grass. The man is going fast down the stairs. I am running up hill.

About the time—about the time the man is standing over the fire plug, I can feel headlights, and I hit dirt.

Q. What do you mean by “hit dirt”? [102]

A. I can feel lights silhouetting me, and I dropped flat and hid as best I could. To the best of my knowledge, Kirschner is doing the same.

As the car went by me, I am up and running again, and I believe I spoke to Chan and said, “Let’s get him.”

Mr. Chavelle: I will object to any conversation with Chan or anybody else there.

(Testimony of Charles Fahey.)

Q. (By Mr. Roberts): Approximately how far from the fire plug were you when you hit the dirt, as you said?

A. Gee, in feet, I don't know. What would I believe? Sixty. I would say sixty feet, fifty feet; something in there. I don't know.

Q. State whether or not you had a view of the fire plug from that position?

A. I think I could roughly—I don't know whether I can see the fire plug actually or not. I believe I can see the top of it, but maybe not until I am farther up the hill. I can't tell.

Q. Well, what next happened?

A. I am up and running, and the man has turned and gone on a fast trot back there up about four steps, and whirled around looking.

Q. Where is the car? [103]

A. The car has passed me, and I am up and running again. The car's headlights have him tagged on the steps.

Q. Who was it?

A. Mr. Blassingame.

Q. And then what happened? What did the car do, first of all?

A. The car went up and turned left, and to the best of my knowledge he killed his lights and dropped out of my—I can't recall the car beyond that.

Q. What did you yourself do?

A. I am running and joining Chan. The man has run up to the steps to about the first or second landing, and has whirled around again, and I

(Testimony of Charles Fahey.)

dropped down, and I am quiet. He is peering back down. He turned, and is running, and I am up and running, and I join Kirschner across the street even with the bottom of steps, but hid by the brush, looking up the hill; and Sam is walking back and forth up on the top of the steps.

Q. How far away from you was he at that point?

A. I don't know. Those are long steps, and it is a long climb. It is fifty feet or sixty feet. I am not good on distances.

Q. Why didn't you follow him up the steps?

A. I am partly out of breath. I couldn't catch him by then, and I am not certain of the evidence I have or [104] of the next move to make. I really——

Q. (Interposing): What do you mean by what "evidence" you have?

A. We didn't know what had actually transpired up to that point.

Q. Well, tell the jury what you did then?

A. Chan called to—there was a slam of a car door, and Sam disappears from our view, and Chan called to Du Puis, who rejoins me, and we are over at the fire plug, and turned our flashlights on, and there, sitting next to the plug, is a round white object.

Mr. Roberts: May I have Plaintiff's Exhibit No. 2, please?

(Whereupon, exhibit was handed to counsel by the Clerk.)

(Testimony of Charles Fahey.)

Q. (By Mr. Roberts): I will ask you to examine the contents of Plaintiff's Exhibit No. 2, and state what it is, if you know?

(Whereupon, there was a brief pause.)

A. Yes, sir, this is the object that lay beside the fire plug at 26th and East John.

Q. Who besides yourself observed that parcel lying by the plug?

A. Chan Kirschner and Agent Du Puis.

Q. And is this the same plug which you testified [105] earlier you thoroughly examined?

A. Yes, sir.

Q. What was the approximately length of time that elapsed between the time that you first examined the area around the plug, and the time that you found this parcel; how much time had elapsed?

A. Gee, that moved awfully fast. I would say we searched for three to five minutes. I would say the whole entire proceedings wouldn't be much over five or six minutes, including the search.

Q. Now, by the time that you first examined the fire hydrant and the area around it, and the time you discovered this parcel at its base, what other individuals, if any, did you observe in the vicinity of the fire plug?

A. There was nobody—there was nobody between the time we searched the fire plug and found this; there was no other person there?

Q. How about the man who was on the stairs?

A. Other than Defendant Blassingame.

(Testimony of Charles Fahey.)

Q. And will you state whether or not you observed him in the vicinity of the fire plug?

A. Yes, sir, I did.

Q. How close to the plug?

A. I would say I observed him standing right beside it, what you might say, over it. [106]

Q. Now, after you discovered this parcel at the plug, what then did you do concerning it?

A. I didn't move it until Du Puis came back and could see it laying there. All three of us saw it laying there. Then I picked it up and marked it for identification, and the other officers marked it for identification and we came back to 7th and Madison, the parking lot, and rejoined the other officers.

Q. What did you then do with the parcel?

Mr. Roberts: Strike that.

Q. (By Mr. Roberts, continuing): In whose possession was the parcel kept after it was picked up from the fire plug? A. Mine.

Q. And what did you do with it after you left that area and the 7th and Madison area?

A. We came to the City Narcotics Squad office and used their fingerprint powder and brushes and dusted it for fingerprints, a routine.

Q. What prints, if any, did you find?

A. None.

Q. And then what did you do with it?

A. Took it back to the office and weighed and sealed it in the presence of Agent Du Puis, and locked it in my desk. [107]

(Testimony of Charles Fahey.)

Q. And would you examine the envelope and state if you recognize any of the writing on it?

A. Yes, sir; it is all my writing with the exception of the witnessing on the weighing and sealing by Agent Du Puis.

Q. After you put it in your locked desk, what, if anything else, did you do?

A. I kept it until the 31st. The 30th was a holiday, Memorial Day, and the following day, the 31st, I delivered it to Chemist Ringstrom.

Mr. Roberts: I have no further questions.

Cross-Examination

By Mr. Chavelle:

Q. Directing your attention to the intersection of 26th and East Thomas Street, Mr. Fahey, will you tell me approximately what the grade is?

A. On East Thomas as it goes eastward from that intersection?

Q. What is the grade of the street going down the hill?

A. East Thomas—there must be a confusion in names here.

Q. What was the——

A. (Interposing): 26th and East John. [108]

Q. No. A. Do you refer to——

Q. No. Well, I will ask you this, then:

Where was the fire hydrant located, what intersection? A. 26th and East John.

Q. 26th and East John, you say; are you sure of that? A. I believe so.

(Testimony of Charles Fahey.)

Q. All right; are there any homes around there?

A. Yes, sir; there are houses.

Q. And did you arrest anybody that night?
When I say "that night," I mean June 19th, 1956.

A. June 19th? Yes, we arrested a man.

Q. In the vicinity of the fire hydrant you just described?

A. Well, it depends on what you mean by "vicinity"; right around that intersection.

Q. Right around that intersection?

A. Yes, sir.

Q. You arrested another man that night, did you not? A. Yes, sir.

Q. While you were doing all this running and searching, you arrested another man in the vicinity—is that [109] right? A. No, sir.

Q. When did you arrest this other man?

A. After we did the running and searching.

Q. After you found the narcotics in the fire hydrant you arrested another man; is that correct?

A. After we had found the narcotics at the fire hydrant there was an arrest, yes.

Q. On direct examination I thought you told us that no one else was in the vicinity?

A. When, counsel?

Q. During the time you were at the fire hydrant at this intersection at 26th and East John, as you call it.

A. There wasn't anybody. There is a problem of time. I don't know when you mean.

Q. All right; was it shortly after you located

(Testimony of Charles Fahey.)

the narcotics at the fire hydrant you arrested somebody else at 26th and East John?

A. Yes, shortly after that.

Q. Would you say two or three minutes later?

A. No, I would say more than that, counsel.

Q. How long?

A. Oh, let's see: in time, perhaps five minutes; some place in there.

Q. Was the man Sam Blassingame, the defendant in [110] this action, the man you arrested?

A. No, sir.

Q. Somebody other than Sam Blassingame?

A. There might be a confusion. I actually arrested nobody. I was present when Detective Kirschner performed the arrest.

Q. Detective Kirschner performed the arrest?

A. That is correct.

Q. On somebody other than Sam Blassingame?

A. Yes, sir.

Q. And you never had anything to do with the arrest of Sam Blassingame for one and one-half months or two months after this incident; isn't that correct? A. That is correct.

Q. Although he had been available to you at all times, so far as you are concerned, from June 19, 1956, up until the time the arrest was made in September, 1956; isn't that correct?

A. Yes, sir.

(Whereupon, there was a brief pause.)

Q. Now, directing your attention momentarily

(Testimony of Charles Fahey.)

to the date of May 29, 1956, which pertains to the time that you say Johnny Clark entered some apartment house? A. Yes, sir.

Q. Do you understand me? [111]

A. Yes; I do.

Q. Now, did you make an arrest that evening?

A. No, sir; not that I recall, anyway.

Q. Did you arrest Sam Blassingame on that date? A. No, sir.

Q. And, again, did you wait until September 27th, or thereabouts, to arrest Sam Blassingame in connection with that incident?

A. I have actually forgotten the date of Sam's arrest, counsel.

Q. Do you think it was in September?

A. I believe some time in there.

Q. That is when he was arrested?

A. That is it, then.

Q. Not May 29th, 1956, or in June, July or August?

(Whereupon, there was a brief pause.)

A. I didn't realize you asked a question.

Q. I say, not May 29, 1956, or in July, July or August did you make an arrest of Sam Blassingame? A. No; we didn't arrest him.

Q. Do you know on May 29, 1956, who the other occupants of this apartment were, when Johnny Clark was in that building?

A. I could only see Sam. I don't know who else.

Q. You don't know who else? [112]

(Testimony of Charles Fahey.)

A. No.

Q. Did you see Miss Fitzgerald enter the premises?

A. I saw a woman, and I only assumed it to be Chinky, but I can't testify it was.

Q. Have you ever seen Chinky before; do you know her? A. Yes; I believe so.

Q. And you say you were able to recognize Sam Blassingame from where you were, but you could not recognize Chinky Johnson?

A. That is very correct.

Q. How far away were you from the entrance to the building or apartment, also described as a duplex; how far away were you in feet?

A. In feet I couldn't tell you. My best guess would be, as I stated, one-half of a downtown city block. That is, a short block out there.

I would say it would be about one-half a block.

Q. And you saw this woman enter the premises, did you? A. Yes.

Q. And you saw her leave the premises, did you?

A. Yes, sir.

Q. And you saw her twice, and out of the same door you say Sam Blassingame was standing, and you are [113] unable to identify her?

A. I very slightly know her, counsel, and I couldn't identify her. As a matter of fact, I don't believe I knew Chinky prior to that date.

Q. I see. You said once before that time.

A. If you asked me that, it was not my understanding.

(Testimony of Charles Fahey.)

Q. There was a misunderstanding, then.

A. I am very sorry.

Q. Now, let's get this story. You say now you didn't know Chinky prior to this time?

A. I have never talked to Chinky. I have seen her, and which actual times I have seen her, I only remember it once of recent origin, and when you say I don't know her, I don't know what you mean.

Q. So that there is no misunderstanding here, let me ask:

Prior to May 29, 1956—you know what date that represents, don't you? A. That is correct.

Q. Had you met or talked with Chinky Johnson or Miss Fitzgerald? A. No, sir.

Q. Had you ever seen her on the street?

A. I have seen her driving her car prior to that time. [114]

Q. You saw her driving her car. Did you know who she was?

A. As I testified, that night I only assumed it was Chinky Johnson, because of the car.

Q. Did you say that Johnny Clark entered the house; you saw that? A. Yes, sir.

Q. Through the rear entrance?

A. Through the rear entrance.

Q. And then you say you saw a woman enter the house; is that correct?

A. That is correct.

Q. And then you say you saw a woman leave the house? A. That is correct.

Q. And you can't identify that woman?

(Testimony of Charles Fahey.)

A. The light had not been put on. I couldn't identify that woman.

Q. Did you see that woman drive any type of an automobile?

A. She drove right by us when she came, counsel.

Q. Is that the same automobile you saw prior to May 29, 1956?

A. Now, you have got it.

Q. And you have got it, too?

A. Yes, sir. [115]

Q. Now, there was an Oriental there. Did you see the Oriental about the premises?

A. It looked like a Japanese to me. They turned on the porch light.

Q. You said he was "messing around." What do you mean by that?

A. I don't even know what he was doing—stood around—what he was doing, I couldn't tell.

Q. You couldn't see or couldn't tell?

A. I think in that part of the building there is a garage, and I don't have an entire view of the duplex, counsel.

Q. Is this man a colored man that was messing around?

A. It is possible, but I don't think he was.

Q. Are you sure what he was?

A. No.

Q. Could he have been a white man?

A. No; I don't believe so. I believe he was a Japanese.

Q. You are not positive?

A. No.

Q. It could have been a colored man, or a white man, or a Japanese; you are not sure?

A. I am not positive what he was, would be

(Testimony of Charles Fahey.)

the [115-a] correct answer.

Q. The only person you are positive of seeing that night is Sam Blassingame?

A. The man I knew.

Q. Did anybody else enter the house or leave the house while you were observing the house that night?

A. No, sir; no, sir.

(Whereupon, there was a brief pause.)

Mr. Chavelle: That is all, sir.

Redirect Examination

By Mr. Roberts:

Q. Mr. Fahey, on direct examination you testified that the fire plug was located at the corner of the intersection of 26th and East Thomas Street.

In answer to questions by counsel for defendant, you changed that to 26th and East John Street.

Now, there is some confusion in my mind as to what your testimony is as to what intersection this was.

A. Counsel, now I am confused in my own mind. 26th and East John is the fire plug, and it is 22nd and Thomas where we parked on the night of May 29th.

If I twisted it around, I certainly——

Q. (Interposing): It is not necessary that you make a final statement right now. If you wish, you may refer to [116] any original notes or records kept by you in the course of your business.

Mr. Chavelle: I object to that. No proper foun-

(Testimony of Charles Fahey.)

dation has been laid to impeach his own witness. He testified already what it was.

The Court: If he wishes to in any way refresh his recollection, he may.

A. Unless I have gotten horribly twisted in names, it is 26th and East John.

Q. (By Mr. Roberts): Why, Mr. Fahey, did you not make an arrest of Sam Blassingame on the evening of June 19, 1956, or at any time shortly thereafter?

A. We anticipated further investigation, would be the main reason. Right in that immediate moment, by the time the evidence was in our hands, the defendant had departed from there, and, as I say, we anticipated further action in the case.

Q. What, if anything, is your policy relative to making an arrest immediately after a buy or receipt of suspected heroin?

Mr. Chavelle: I will object to that, your Honor. The policy is immaterial. There is no issue as to policy in this. [117]

Q. (By Mr. Roberts, continuing): If such a policy exists?

The Court: Do I understand that the purpose of the questions in cross-examination was to indicate delay?

Mr. Chavelle: No; I just asked when the arrest was made, and he said in September.

The Court: You don't contend there was anything unusual about it?

(Testimony of Charles Fahey.)

Mr. Chavelle: No; just bringing it up, when the arrest was made.

Mr. Roberts: I certainly feel counsel will—

The Court: Well, he already stated he will not object. If there is no contention there was nothing unusual about it, I assume it was not material.

Mr. Roberts: Very well. I have no further questions.

The Court: Mr. Fahey, I have one or two questions. I may have—I didn't clearly understand the time that you gave Exhibit 2 for identification to Mr. Ringstrom. I understand you so testified, is that correct, Exhibit No. 2?

The Witness: I gave Exhibit Number 2 to Hugo Ringstrom.

The Court: What time did you deliver that? That is the date I don't have. [118]

The Witness: Number 2 would have been delivered the 21st of June, I believe.

Mr. Roberts: Didn't you testify you kept it over a holiday on the 20th?

The Witness: No; I believe that was the other exhibit.

Mr. Roberts: Very well. I have no further questions.

(Witness excused.)

Mr. Roberts: Your Honor, at this time may I request that we take the mid-afternoon recess?

I have one witness I would like to talk with before I bring him on.

The Court: All right.

Members of the Jury: We will now take the mid-afternoon recess. The Court calls your attention to the admonition given you this morning on the occasion of a recess, and asks that you heed it on this occasion. You may now be excused.

(Whereupon, the jury retired from the courtroom.)

The Court: Court will recess fifteen minutes.

(Whereupon, at 3:03 o'clock p.m., a [119] recess was had in the within-entitled and numbered cause until 3:15 o'clock p.m., January 15, 1957, at which time, counsel and the defendant heretofore noted being present, the following proceedings were had, to wit.)

The Court: You may call the jury.

(Whereupon, the jury was returned to the courtroom.)

The Court: You may be seated.

It is stipulated that the jury and the defendant are present in the courtroom?

Mr. Roberts: So stipulated.

Mr. Chavelle: So stipulated, your Honor.

Mr. Roberts: We will call Johnny Clark. [120]

JOHNNY CLARK

upon being called as a witness for and on behalf of the plaintiff, and upon being first duly sworn, testified as follows:

The Clerk: Will you state your full name and spell your last name, please?

The Witness: Johnny Clark, C-l-a-r-k (spelling).

(Testimony of Johnny Clark.)

Direct Examination

By Mr. Roberts:

Q. Johnny, where do you live?

A. I live 1522-18th Avenue.

Q. I will ask you if you have ever used narcotic drugs in any form, Johnny?

Mr. Chavelle: I will object to that, your Honor.

The Court: Objection overruled.

Mr. Chavelle: Not an issue.

The Court: Objection overruled.

Q. (By Mr. Roberts, continuing): You may answer the question, Johnny. A. Yes, sir.

Q. Do you use them at the present time?

A. No, sir.

Q. Did you use them in the past?

A. Yes, sir. [121]

Q. For quite a period of time?

A. About three months.

Q. State whether or not you were using narcotics during the months of May and June, 1956, last year? A. Yes, sir.

Q. Inviting your attention to on or about May 29th of 1956, I will ask you if you recall meeting with Seattle Police Department officers and Federal Bureau of Narcotics officers in this city of Seattle?

A. Yes, sir.

Q. Where did you meet them?

A. King Street Tavern—King Street Station.

Q. And where did you go after you left there?

(Testimony of Johnny Clark.)

A. Oh, we went up on a parking lot about 7th or 8th—7th or 8th Avenue.

Q. On Madison Street, or thereabouts?

A. Right up here from this courthouse, up here.

Q. All right; did you stay there, or did you go to some other place? A. Stayed there.

Q. Did you thereafter go to make a telephone call? A. No.

Q. On that evening, did you make a telephone call at all? A. No. [122]

Q. Did you on that evening go to the corner of 19th and Roy Street, up on Capital Hill and make a telephone call? A. No.

Q. State whether or not you purchased any narcotics that evening? A. No.

Q. Pardon me? A. No, sir.

Q. State whether or not you purchased any narcotics with money that was given you by the officers specifically so that you could buy some narcotics with that money on that night? A. No, sir.

Mr. Roberts: Your Honor, I claim surprise at this time. It is the first indication I have had that this witness may not testify as I have very good reason to believe he would testify earlier in a statement given to Federal Narcotics officers, and I request permission to lead the witness and ask him specific questions relative to a prior statement he has made.

Mr. Kosher: If your Honor please, I object to that on the ground this is an attempt to impeach his own witness without laying the proper founda-

(Testimony of Johnny Clark.)

tion, and I think he should lay the foundation, and that it should be done in [123] the absence of the jury.

The Court: Do you have a sworn statement?

Mr. Roberts: Yes, your Honor, and I certainly will subscribe to any argument on the matter being held outside the presence of the jury.

The Court: All right. Members of the Jury: The Court will excuse you, to consider a matter of law that is not of moment to the jury, on the question of facts, so that you will now be excused.

(Whereupon, the jury retired from the courtroom.)

Mr. Kosher: Your Honor, may I be heard at this time?

The Court: If you wish. Do you wish to make any further reference?

Mr. Roberts: I believe I should make an offer of proof, and if I might have one brief moment to confer with Mr. Fahey.

The Court: All right.

(Whereupon, there was a brief pause.)

Mr. Roberts: If your Honor please, for the record I will read into the record, by way of an offer of proof, a statement given by the Witness Clark to Federal Narcotics agents, specifically Agent Fahey, Charles Fahey, on May 29, 1956, within one hour or so after the time of the [124] alleged buy that has been testified by other witnesses as having taken place on May 29th, 1956.

(Testimony of Johnny Clark.)

The statement reads as follows:

“On this date I was searched by Narcotic Agent L. E. Gooder in the presence of Detectives Sprinkle and Waitt. They looked in my sox and shoes even. I did not have any narcotics on my person. I was supplied with \$25.00 Government advance funds by Agent Gooder. I previously had signed a receipt for Agent Fahey for this money. About 9:00 p.m. I met Detectives Waitt, Sprinkle, Henaby and Kirschner, at the King Street depot as planned and then we went to meet Agent Gooder and Fahey. From there we went to 19th and Roy where we all joined and I made a telephone call from the public phone booth in the presence of Detective Sprinkle. I dialed East 8797 and Sam Blassingame answered. Detective Sprinkle had his ear to the phone also and he could hear the conversation on both ends.

“I asked Sam how long he was going to be around and was it all right for me to come out. He said, ‘Come out.’ This is the time then I was searched and also the officer (Detective Waitt) put some sort of recording device, I guess you call it, on me, and strapped it around me. I don’t know what it is other than what they have told me. [125]

“I went in the Government Ford with Gooder and Sprinkle and Waitt to a spot south of Thomas on 22nd from where you could see ‘Chinkie’s’ house. Detective Sprinkle went with me and I could see him around in the lot.

“I walked to the back door and knocked. Sam came to the back door and he could see through the

(Testimony of Johnny Clark.)

glass and let me in. I gave him the \$25.00 advance funds and told him I wanted one spoon of stuff. He took me in the living room and I sat down and Sam went into the basement. He came back in a little bit and said, 'I can't find the stuff.' He went to the phone and called someone and asked to speak with Chink. He then said, 'Come on home. I can't find the "thing."' These may not be the words he used. I can't recall, but it seems to me it was something like that. It was a short conversation.

"We sat there and talked for awhile and finally I asked him if I couldn't get that 'thing,' and he just nodded his head and said, 'She's coming.' In a little while Chinkie came in. There wasn't a word said and she went in the basement. When she came up she had a prophylactic rubber in her hand and she gave it to Sam saying, "I asked you if you were going to use this tonight before I put it away.' [126]

"He took the rubber and poured out my spoon of stuff right then on the couch where he was sitting. I asked him if it was the same stuff as I'd been getting, and he said, 'Yes, I've got some other but I'm going to fix it up tomorrow.' He used a plain teaspoon to measure with. Chinkie had left as soon as she gave Sam the stuff. The general trend of the conversation had been about the price of heroin in Seattle.

"There was no more conversation. Sam opened the back door for me and I left. I would make a pure guess that I was in the house about twenty or twenty-five minutes. When I went up the walk

(Testimony of Johnny Clark.)

on Thomas, I could see Detective Sprinkle walking up through the grass on my left, and he was with me when I got in the car and rejoined Detectives Waitt and Gooder. It was a clear night and followed one of Seattle's hottest days. The back porch light of the house was on when I left as the neighbors, I guess, were out there.

"When I got in the car Agent Gooder had me mark the paper of heroin for identification with my initials. They then took this machine off of me and we came to the Federal Narcotic office where I make this statement.

"I have known Sam Blassingame since [127] 1945. In 1952 and 1953 when he lived on 15th Street, I bought heroin from him. I started in again about March, 1956, and have been buying regularly from him to this date. I would say that Sam Blassingame is identical with Seattle Police Photograph Number A-2182. I have only known 'Chinkie' since March of this year. She drives about a 1953 Oldsmobile, red and cream car. It has one of those fancy wheels on the rear.

"On one other occasion when I had made arrangements to buy from Sam, Chinkie answered the door and told me the stuff was on the mailbox. I can't read very well, but Mr. Fahey has read this statement over to me, and it is the truth to the best of my knowledge and belief."

Signed by Johnny Clark on both of the two pages.

In addition to that, your Honor, by way of further offer of proof—this morning in response to a

(Testimony of Johnny Clark.)

subpoena, Mr. Clark appeared for trial about five minutes to ten. I only asked him if he was in proper condition to testify and he said he was.

I asked him if there was any change in his testimony from the statement he had previously given to the narcotic officers. He advised me, no, that he would tell the story straight as he had at that [128] time.

During the recess just ten minutes ago I again asked Mr. Clark if he had any problems concerning his testimony. He assured me he had none. He told me he would testify exactly to the truth as he had given to the agents.

For the first time, when I heard his response to the questions, it was apparent to me that he does not so intend to testify and I, therefore, respectfully move the Court that I be permitted to cross-examine this witness on the prior inconsistent testimony.

I will go through and get his story as it is today, and I think I am entitled to cross-examine him in the light of his preliminary statement.

Mr. Kosher: Your Honor, I agree with counsel. If he is surprised, he has a right to impeach his own witness, and I have no reason to doubt it. He undoubtedly is surprised by the testimony of his own witness.

But there is one other thing that must be apparent to the Court, and that is that some affirmative damage must be done to the case. This witness has

(Testimony of Johnny Clark.)

testified to nothing, practically, at this point. He simply says that nothing happened.

The Court: Well, you mean that wouldn't be damaging to their case?

Mr. Kosher: Now, what he wants to do—the purpose of his impeachment will be to show that [129] this witness is an untruthful witness and the danger always lays in the jury hearing this statement and taking it for the truth of what was said, and that isn't the purpose for which he is being impeached now.

The Court: I don't think that is sufficient ground to not permit him the examination. The document doesn't necessarily go into evidence at all.

Mr. Kosher: No; but I think this jury should know now——

The Court (Interposing): And I don't think—there are certain parts of it that I don't think he should be interrogated about.

Mr. Kosher: The point I am making is this——

The Court: Namely, purchases made, and previous buys.

Mr. Roberts: That is right, your Honor. I agree.

Mr. Kosher: Then what will happen is quite apparent. This witness will be confronted with these statements that he supposedly made to show that he made prior inconsistent statements, the purpose being to show it is not likely that this witness upon the witness stand is telling the truth.

The Court: That is correct.

(Testimony of Johnny Clark.)

Mr. Kosher: But the danger, of course, lies [130] in——

The Court (Interposing): The Government, of course, is bound to call this witness if he is available. The Government can't pass a witness available to them and not call him, and on the showing made here, it is that he would have reasonable cause to believe that he signed such a statement, and the Government, having the burden of producing the witness, when one is available, and certainly having knowledge that would be material here under the theory and under the facts as they have advanced, I certainly think, for what interest or weight it may have with the jury, I think it should be brought out.

Mr. Kosher: I think that now he is going to cross-examine his own witness for the purpose of showing that the witness upon the witness stand is just not a truthful witness, but this jury should not be permitted, I don't believe, to take the out-of-Court statements he made and assume that they prove certain facts in this case, and I think if the Court is going to permit him to cross-examine this witness at this point that the jury should be made to understand the purpose of it, because the danger lies in the fact that this jury may accept these out-of-Court statements as some proof in the matter.

The Court: The Court will give a proper instruction at the proper time. [131]

Mr. Roberts: I believe the instruction should

(Testimony of Johnny Clark.)

relate to the credibility of the witness and what weight the jury may give to it.

The Court: The only questions that he may cross-examine him on are questions which would be material to the issues in this case. They are the only ones that you may refer to.

Mr. Roberts: Yes, your Honor.

The Court: And, of course, he should be given opportunity to see the statement and to read it.

Mr. Kosher: If your Honor please, I think it is only fair to this witness that somebody instruct him that he has certain rights here.

Mr. Roberts: I believe Mr. Chavelle is his lawyer.

Mr. Chavelle: Not in this case I am not his lawyer.

Mr. Roberts: In a murder case, isn't that true?

Mr. Kosher: If this man made a statement to the narcotic officers, I think he should, at least, know he has a right to invoke the Fifth Amendment if he wants to.

In other words, it is a crime for this man to have made a false statement to the narcotic agents, if he is now telling the truth upon the witness [132] stand.

The Court: Well, I can advise the defendant—I mean the witness, Mr. Clark—that it is the constitutional right of any individual to not make a statement which will serve to incriminate him—which will subject you to prosecution.

Mr. Kosher: Do you understand that, Mr. Clark? Do you understand what the Court just told you?

(Testimony of Johnny Clark.)

The Witness: No, sir.

Mr. Roberts: I believe, your Honor, that it might be pertinent to explain to the witness that he is under no compulsion to answer any question. He has a right and he, himself, should advise the Court in response to any question that he desires to invoke his privilege under the Fifth Amendment of the Constitution, not to answer that question, because it may tend to incriminate him in a Federal crime.

The Court: Well, Mr. Clark, you have been called as a witness. You understand that?

The Witness: Yes, sir.

The Court: Now, no person is required to answer a question put to them on the witness stand which question would serve to subject them to—or might lead to their incrimination, or being charged with a crime.

In other words, you are not required to make a statement which could be used as evidence against you [133] in the prosecution—in a prosecution for an offense.

It is an offense to falsely testify. It is an offense to make a false statement to a person such as Mr. Fahey in connection with a matter that is material to his work; that is, within the nature of his duties.

In other words, if you make a false statement in regard to narcotics to a narcotic officer, that is an offense.

Now, you are not required to testify or to answer questions that may be put to you by Mr. Roberts

(Testimony of Johnny Clark.)

if they would tend to incriminate you or tend to subject you to prosecution for an offense.

Do you understand that?

The Witness: Yes, sir.

Mr. Roberts: I think it should be made clear to him, also, your Honor, that I may ask of him some questions which, in my opinion, may not incriminate him, but the decision is with the witness himself as to the given question asked.

The Court: I think I have sufficiently covered it.

Mr. Chavelle: Does he understand it now?

The Court: He says he does. I don't know the man.

Mr. Kosher: I don't, either.

Mr. Chavelle: I represented him in a [134] murder case down in Justice Court.

The Court: Do you know him?

Mr. Chavelle: Yes.

Mr. Roberts: Do you feel he understands the Court's instructions, Mr. Chavelle?

Mr. Chavelle: I don't think he does understand.

The Court: Do you want to ask him some questions here then?

Mr. Chavelle: Do you understand what the Court just told you, and what Mr. Roberts explained to you, that you have certain rights under the Federal Constitution, and if there is any question propounded to you or asked of you that you feel incriminates yourself or subjects yourself to the penalty of the law, that you have a right to refuse to answer that?

(Testimony of Johnny Clark.)

The Witness: Yes, sir.

Mr. Chavelle: Do you understand that?

The Witness: Yes, sir.

Mr. Chavelle: Is that clear in your mind?

The Witness: Yes, sir.

Mr. Chavelle: And you understand that is as to each question that might be propounded to you—if there is something you feel that would involve you or subject you to the penalty of the law, you have a right to protection under the Fifth Amendment to the Constitution to say, [135] “I refuse to answer any question on the ground it might incriminate me and open me to prosecution”?

The Witness: Yes, sir.

Mr. Chavelle: Do you understand that?

The Witness: Yes, sir.

Mr. Chavelle: Thoroughly?

The Witness: Yes, sir.

Mr. Roberts: You understand, Johnny, when a question is asked of you, if you think it will incriminate you, you must speak up and say, “I refuse to answer that question on the ground of the Fifth Amendment, because it may tend to incriminate me”?

The Witness: Yes, sir.

Mr. Roberts: Do you understand that?

The Witness: Yes, sir.

Mr. Chavelle: Do you understand that you must say, as to each question, whether you feel it will incriminate you; do you understand that?

The Witness: Yes, sir.

(Testimony of Johnny Clark.)

The Court: Do you think he understands it, Mr. Chavelle?

Mr. Chavelle: Yes; I think he does.

The Court: Mr. Clark, do you think you do?

The Witness: Yes, sir.

The Court: That doesn't mean that any [136] question that you should—that all questions will incriminate you. There may be many questions that wouldn't.

Of course, you are to claim this privilege if you choose to and you don't have to claim privilege, but it is your right if you choose to. It applies to questions which may have a tendency to incriminate.

Now, that may be a little difficult for a layman to understand at times, but, after all, only the person that claims it can determine that.

The Witness: Yes, sir.

The Court: I don't know how qualified he is to make those claims. I don't know what his condition is. If counsel thinks he should be further informed——

Mr. Chavelle (Interposing): Well, we will try it as we go along, and if it seems he can't understand——

Mr. Roberts (Interposing): I would rely, your Honor, more on Mr. Chavelle's opinion, inasmuch as it appears, your Honor, he has represented and does not represent the witness in another very substantial criminal charge pending against him in State Court.

I am assuming Mr. Chavelle has discussed that

(Testimony of Johnny Clark.)

matter with Mr. Clark at some length and has formed his own opinion as to his client's ability to understand his rights. [137]

Mr. Chavelle: Well, as far as the murder case was concerned, it was a preliminary hearing, and Mr. Clark has never been on the witness stand so far as I know.

Mr. Roberts: I assume you talked to him about the case?

Mr. Chavelle: Yes.

Mr. Roberts: You did?

Mr. Chavelle: Yes.

The Court: Are you ready to proceed? I think the Government is entitled to claim surprise.

Mr. Chavelle: I think it should also be settled what parts he will refer to.

Mr. Roberts: I may advise the Court that the only part of the statement I intend to refer to is the statement of Mr. Clark; first of all, I will ask him if he made a statement May 29th.

The Court: Before you go into that—can you read?

The Witness: Not so good.

Mr. Roberts: May I ask you, Johnny, if your statement was read to you by anyone in the Narcotics office?

The Witness: My statement? I haven't made no statement.

Mr. Roberts: Pardon me, sir? [138]

The Witness: I haven't made no statement.

(Testimony of Johnny Clark.)

Mr. Roberts: Was a statement read to you today?

The Witness: Oh, an officer read a paper to me.

Mr. Roberts: And didn't he give you the paper and say, "Johnny, you had better look this over"?

The Witness: That is right.

Mr. Roberts: And that was just today, wasn't it?

The Witness: Yes, sir.

Mr. Roberts: Well, I will hand you——

The Court (Interposing): Is there a signature there?

Mr. Roberts: Yes.

The Court: Have you seen this?

Mr. Kosher: No, we haven't.

Mr. Roberts: I believe it should be marked, if your Honor please.

The Court: Yes; I think so. I see no reason why counsel shouldn't look at it now, do you?

Mr. Roberts: None whatever, your Honor.

The Clerk: Plaintiff's Exhibit No. 3 for identification.

(Plaintiff's Exhibit No. 3 marked for [139] identification.)

Mr. Kosher: Mr. Clark, did you sign this exhibit?

The Court: He hasn't seen it. Just a minute. Look it over, first.

(Whereupon, there was a brief pause.)

The Court: Mr. Roberts, do you want some more time?

(Testimony of Johnny Clark.)

Mr. Roberts: I am prepared to go ahead, if your Honor please.

The Court: Well, counsel have looked this over. Mr. Koshier wanted to ask Mr. Clark if this is his signature. It seems to me that that is a matter to be asked before the jury. I don't think we should go into that now, unless counsel has some other view of it.

Mr. Roberts: Has Mr. Clark seen this?

The Court: I don't believe he has.

Mr. Roberts: If not, I think we should do it in the presence of the jury.

The Court: I think it should be before the jury.

Mr. Chavelle: Yes.

The Court: Are there any other questions you anticipate? Certainly that part of the statement that refers to purchases at other times has no bearing.

Mr. Roberts: I have no intention of going [140] into that.

The Court: All right, you may call the jury

(Whereupon, the jury was returned to the courtroom.)

The Court: You may be seated.

It is stipulated that the jury and the defendant are present in the courtroom?

Mr. Chavelle: So stipulated, your Honor.

Mr. Roberts: So stipulated, your Honor.

The Court: You may proceed under your claim of surprise.

Mr. Roberts: Thank you, your Honor.

(Testimony of Johnny Clark.)

Q. (By Mr. Roberts): Johnny, you told us on the evening of May 29, 1956, you met with police officers at the King Street station and went with them to 7th or 8th or 9th and Madison, a vacant lot, and met some other officers; am I correct to that point?

A. Yes.

The Court: Keep your voice up, Mr. Clark.

A. (Continuing): Yes.

Q. (By Mr. Roberts): And I asked you if it wasn't a fact you went from that point on down to the corner of 19th and Roy on [141] Capitol Hill to make a telephone call. Did you so do?

A. No, sir.

Q. What did you do at this vacant lot on Madison Street?

A. Well, I went up there with some officers and we met some more officers up there in the car lot, and they was asking me about trying to make a buy.

Mr. Chavelle: I will object to that as hearsay, your Honor; a statement made not in the presence of the defendant, Blassingame, in conversations between Mr. Clark and the officers.

The Court: This is not a conversation up to this point. Go ahead.

Q. (By Mr. Roberts): What did you do as a result of that meeting?

A. They was asking me about trying to make a buy of some narcotics for them.

Q. Did they mention anyone in particular?

A. Not at that particular time.

Q. Well, what did you do then?

(Testimony of Johnny Clark.)

A. So they give me a phone number to call them back later, after I think of it. So, about a day or so later I run into the officers again.

Q. Just a moment. I would like you to confine—tell us what you did the evening of May 29th. [142]

They gave you a phone number; then what did you do? A. I left.

Q. You didn't do anything more with the officers that night? A. No.

Q. Isn't it a fact you went with the officers down to 19th and Roy and made a telephone call?

A. No.

Q. Didn't you thereafter go down to 23rd and Thomas and go up to the back door of a duplex?

A. No, sir.

Q. Didn't you thereafter go on into that duplex and have a conversation with Sam Blassingame?

A. No, sir.

Q. Speak up, Johnny.

A. I didn't see Mr. Blassingame.

Q. You didn't see him? A. No, sir.

Q. Do you know Sam? A. Yes, sir.

Q. Did you know him on May 29th?

A. I have been knowing him since about '43 or '4.

Q. Johnny, what kind of a relationship do you have with him? [143]

A. Oh, just know him when I see him.

Q. You just know him when you see him; do you have any business dealings with him?

A. No, sir.

(Testimony of Johnny Clark.)

Q. What business is he in?

A. I don't know what business he is in.

Q. You don't know of any business that he is in?

A. No, sir.

Q. It is your testimony that you did not go to Chinkie Johnson's apartment, 23rd and Thomas, on May 29th; is that right? A. That is right.

Q. And you didn't buy 36 grains of heroin, or a spoon of heroin, that night? A. No, sir.

Q. Isn't it a fact that on the evening of May 29th you were in the office of the Federal Bureau of Narcotics, in this very courthouse building, and that you made a written statement to them about the things you had done that very night concerning buying narcotics?

You are under oath, Johnny.

A. Well, I refuse to answer that.

Q. Pardon me?

A. I refuse to answer that on the grounds of the Fifth Amendment. [144]

Q. What is your specific reason for refusing to answer that question?

A. It would be incriminating.

Mr. Kosher: Just a minute.

The Court: He has answered it sufficiently.

Mr. Roberts: I think the full answer would be——

The Court (Interposing): He says it would be incriminating. It might well be.

Q. (By Mr. Roberts): I hand you, Johnny, a document marked as Plaintiff's Exhibit No. 3 for

(Testimony of Johnny Clark.)

identification. I ask you to examine this piece of paper. There are two sheets. Take it in your hand. Look at it very closely. Particularly look at the bottom of the page. Do you observe any pen and ink writing there? A. Yes, sir.

Q. What does that writing say?

A. "Johnny Clark."

Q. Is that your signature?

A. Yes, sir; that is my signature.

Q. Look at page two. Is there any writing at the bottom of that page? A. The same writing.

Q. What is that writing? [145]

A. That is my name, Johnny Clark.

Q. Is it your writing?

A. Yes, sir; that is my signature.

Q. Did you write that down there?

A. Yes, sir.

Q. Look at the first page. What date does this document bear at the top?

A. That says May 29, 1956.

Q. What city? A. Seattle, Washington.

Q. And it says by whom?

Mr. Kosher: I object to him referring to matters in that document.

A. This says Johnny Clark.

Q. (By Mr. Roberts): All right, Johnny; did you make this statement?

A. I ain't done no writing or nothing. I sign my name to these papers. What was on them, I don't know. I don't know what somebody might put on there.

(Testimony of Johnny Clark.)

Q. You don't know what was on them? Did anybody read that statement to you before you signed it?

A. I read it—the man read it today. This is the first time my seeing it knowing what was on it from what he was reading to me today. I don't know what was on it before. [146]

Q. You are charged with murder in the State Court, are you not? A. That is right.

Mr. Chavelle: I object.

Mr. Kosher: I object.

The Court: Objection sustained.

Mr. Kosher: And I move for a mistrial at this time.

The Court: Members of the jury:

The Court sustained the objection to the question and you should disregard the answer made, if any, and also you are not to give any effect or draw any inferences from the question and the fact that it was put.

Q. (By Mr. Roberts): Did you sign this statement today when it was shown to you, Johnny?

A. No, sir.

Q. You didn't sign it today? A. No, sir.

Q. Well, could you have signed it on May 29, 1956, the date that it bears?

A. I may have—could have—signed it then. I don't know what day I signed it.

Q. That was the day you met with all the police officers and the narcotic officers, isn't that [147] right?

(Testimony of Johnny Clark.)

Johnny, do you believe in God?

A. I met those officers at night.

Q. Johnny, do you believe in God Almighty?

A. Yes.

Mr. Kosher: I object to that on the ground it is immaterial.

Mr. Roberts: I believe this man is trying to tell the truth, and I would like to interrogate him along this line.

Q. (By Mr. Roberts): Are you a religious man?

A. Yes, sir.

Q. Do you believe that there is a God in Heaven?

A. Yes, sir.

Q. Now, you are under oath on this witness stand? A. That is right.

Q. Do you know what an oath is?

A. Yes, sir.

Q. Do you know that an oath is a solemn calling upon God Almighty to witness the truth—

A. (Interposing): That is right.

Q. (Continuing): —of answers to the questions, of questions put to you? A. Sure.

Q. Do you want to tell the truth, Johnny? [148]
On May 29th, did you make a telephone call?

A. No, sir.

Q. Did you go to Sam's apartment?

A. No, sir.

Q. Johnny, in this statement, which is over your signature, it says that on May 29th—

Mr. Kosher (Interposing): May the record show that we object to this?

(Testimony of Johnny Clark.)

The Court: I beg pardon?

Mr. Kosher: May the record show that the defendant Blassingame objects to any reading of this statement on the ground it is an attempt to impeach this witness without a proper foundation being laid for it?

The Court: The record may so show.

Q. (By Mr. Roberts): —Johnny, in this statement, which is over your signature, the following is said:

“On this date * * *” May 29, 1956, “* * * I was searched by Narcotic Agent L. E. Gooder in the presence of Detectives Sprinkle and Waitt. They looked in my sox and shoes even. I did not have any narcotics on my person.”

Is that true? Did they do that on May 29, 1956?

A. I refuse to answer that.

Q. On the ground it may tend to incriminate you, [149] is that correct? A. Yes, sir.

Q. You feel free to make that reply.

“I was supplied with \$25.00 Government advance funds by Agent Gooder. I previously had signed a receipt for Agent Fahey for this money.”

Is that a true statement?

A. I refuse to answer to that on the grounds.

Q. “About 9:00 p.m. I met Detectives Waitt, Sprinkle, Henaby, and Kirschner at the King Street Depot as planned and then we went to the Agents Gooder and Fahey. From there we went to 19th and Roy where we all joined and I made a telephone

(Testimony of Johnny Clark.)

call from the public phone booth in the presence of Detective Sprinkle.”

Is that a true statement?

A. I refuse to answer.

Q. On the grounds of the Fifth Amendment?

A. On the ground of the Fifth Amendment.

Mr. Koshier: And may the record disclose our running objection, your Honor, so that I won't have to object to every question he puts?

The Court: Yes. I think there are some questions there that may not be appropriate. Does the Government have any objection to letting a continuing objection run? [150]

(Whereupon, there was a brief pause.)

Q. (By Mr. Roberts): Did you say:

“I dialed EAst 8797 and Sam Blassingame answered. Detective Sprinkle had his ear to the phone also and he could hear the conversation on both ends.”

Mr. Chavelle: Just a minute. I thought you proposed a question to counsel?

The Court: Yes. Do you have any objection to having a running objection?

Mr. Roberts: Yes; I will stipulate to that, your Honor.

Mr. Chavelle: Very well.

Mr. Roberts: And I will further advise Court and counsel I will not go into any matters not pertinent to this particular case.

Q. (By Mr. Roberts, continuing): What was

(Testimony of Johnny Clark.)

your answer to that last question, Johnny? Do you refuse to answer that also? A. Yes, sir.

Q. Did you say:

“I asked Sam how long he was going to be around, and was it all right for me to come out.”

And did you further say:

“He said, ‘Come on.’ ” [151]

A. I refuse to answer that.

Q. Did you also say:

“This is the time then I was searched and also the officers put some sort of recording device, I guess you call it, on me, and strapped it around me. I don’t know what it is other than what they have told me. I went in the Government car with Gooder and Sprinkle and Waitt to a spot south of Thomas on 22nd from where you can see ‘Chinkie’s’ house.”

Did you also say that?

The Court: The question is, did that happen?

Q. (By Mr. Roberts, continuing): Did that happen? A. No, sir.

Q. Pardon me? A. No, sir.

Q. Do you refuse to answer that?

The Court: He answered it.

Mr. Roberts: Pardon me.

Q. (By Mr. Roberts, continuing): Did you also tell the officers:

“Detective Sprinkle went with me and I could see him around in the lot,” as you approached [152] Chinkie’s apartment? A. No, sir.

Q. Did you also tell the officers that you walked

(Testimony of Johnny Clark.)

to the back door and knocked at Chinkie's apartment? A. No.

The Court: I think you had better put that—you had better ask whether that happened.

Mr. Roberts: Pardon me?

The Court: You had better change those questions. Did it happen? I think he said he made no statement.

Mr. Roberts: All right.

Mr. Chavelle: I think what counsel is doing is asking, did he make the statement, and he is answering that. It is not whether it actually happened. Did these things happen that are contained in the statement?

Q. (By Mr. Roberts): Isn't it a fact, Johnny, that you knocked on the door, and that Sam opened the door and let you in, and that you gave him \$25.00 in money that the agent had given you on May 29th? A. No, sir.

Q. Pardon me? A. No, sir.

Q. Didn't you also tell him at that time that you [153] wanted a spoon of stuff?

A. No, sir; I never had no conversation with that man about narcotics.

Q. Isn't it a fact that at that time he took you into the living room and said he couldn't find his stuff, and then he went to the phone and called someone and asked to speak to "Chink," and then he said, "Come on home, I can't find the thing," to the party he was talking to on the phone?

A. No, sir.

(Testimony of Johnny Clark.)

Q. And didn't you just sit around the apartment with Sam "awhile and finally I asked him * * *" didn't you ask him if you couldn't get that thing, and he just nodded his head and said, "She is coming"?

Didn't that take place?

A. I never saw Sam that day.

Q. Isn't it a fact a little while later Chinkie came in and there wasn't a word said, that she just went down to the basement and came back carrying a rubber package which she gave to Sam, and she said, I think, "I asked you if you were going to use this stuff tonight before I put it away"; didn't that take place?

A. No, sir.

Q. Didn't Sam take that rubber package and pour out a spoon for you right there on the couch where he was [154] sitting?

A. I never got no narcotics from that man at no time.

Q. Didn't you ask him if this was the same stuff you had been——

Mr. Roberts: Strike that. I believe that is material, your Honor. I will rephrase the question.

Q. (By Mr. Roberts, continuing): Didn't you also ask Sam Blassingame at the time he was pouring this spoon for you if this was the same stuff you had been getting?

Mr. Chavelle: I object to that, your Honor, and ask for a mistrial. Counsel was admonished to not go into that at all, and he is referring to some other

(Testimony of Johnny Clark.)

transaction, or other stuff, that this man is alleged to have obtained from the defendant.

We have a stipulation it will not be referred to and it has been referred to. It is prejudicial to the defendant's case.

Mr. Roberts: This is a direct quote of a conversation that actually took place at the time of this sale.

Mr. Chavelle: We agreed those things could not be gone into, as to what previously happened.

Mr. Roberts: It has a direct bearing on the conditions of a buyer and seller at the time of [155] this transaction.

The Court: I think rather than—it may be but out of an abundance of caution I will sustain an objection to the question.

Mr. Roberts: Very well, your Honor.

Q. (Continuing): And isn't it a fact that after this you left the apartment and rejoined Detective Sprinkle and went and met with Sprinkle and Gooder and delivered this parcel of heroin which you just purchased from Sam? Didn't you do that on the evening of May 29th? A. No, sir.

Mr. Roberts: I have no further questions.

The Court: Before you proceed with cross-examination:

Members of the Jury:

The United States Attorney has just been examining this witness with respect to certain matters contained in a document that has been marked as Exhibit No. 3. The Court wants to advise you as to the purpose of that questioning.

(Testimony of Johnny Clark.)

It has appeared in connection with this witness that the Government has been surprised, and that they anticipated other—that this witness would testify otherwise than he has indicated on the stand.

The Court has allowed the Government to [156] examine this witness by the use of what are known as leading questions; in other words, permitted him to be cross-examined.

These questions that have now been put here, which have been put after referring to this exhibit, are not to be construed as evidence of the facts contained in those questions. Those questions were put because they have some bearing upon the credibility of this witness, and while the witness has indicated his signature appears on that document, you are not to construe the questions as put to him from that document as being evidence in and of themselves insofar as this witness is concerned. The only purpose is to bring out matters that may have a bearing so far as the jury is concerned on whether or not they are going to believe this witness.

Mr. Roberts, does that, in substance, cover the purpose?

Mr. Roberts: I believe it does, your Honor.

The Court: Mr. Chavelle and Mr. Kosher?

Mr. Chavelle: Yes.

Mr. Kosher: Yes.

Mr. Chavelle: We have no cross-examination.

Mr. Kosher: I have none.

The Court: That is all, Mr. Clark.

(Witness excused.)

Mr. Roberts: We will call Mr. Du Puis. [157]

CHARLES F. DU PUIS

upon being called as a witness for and on behalf of the plaintiff, and upon being first duly sworn, testified as follows:

Direct Examination

By Mr. Roberts:

Q. Please state your full name and your occupation?

A. Charles F. Du Puis, D-u P-u-i-s (spelling), Narcotic Agent attached to the Treasury Department, stationed at Seattle, Washington.

Q. Mr. Du Puis, were you so stationed here in Seattle during the months of May and June, 1956?

A. I was.

Q. Inviting your attention to on or about June 19, 1956, I will ask you if you had occasion to meet a man by the name of Johnny Clark?

A. I did.

Q. Will you describe the circumstances surrounding that meeting?

A. I met Mr. Clark with Mr. Fahey, Mr. Sprinkle, Mr. Henaby and Mr. Kirschner here at 7th and Madison in a parking lot.

Q. And as a result of that meeting, what did you do?

A. Mr. Kirschner and Mr. Fahey and I [158] drove to the vicinity of 26th and East Thomas here in Seattle, Washington.

Q. And what——

(Testimony of Charles F. Du Puis.)

Mr. Chavelle (Interposing): What was the address? I am sorry.

The Witness: 26th and East Thomas, Seattle, Washington.

Q. (By Mr. Roberts, continuing): Would you describe the intersection at 26th and East Thomas?

A. 26th going north is a dead-end street. East Thomas going west is a dead-end street.

Q. As you look west from East Thomas, what do you see?

A. You see some concrete stairs running up to East Madison Street.

Q. And what is the degree of slope, if any, on the stairs?

A. Oh, it is pretty steep. I would say 35 degrees or thereabouts.

Q. What did you observe by way of vegetation on that hill?

A. On the left-hand side of 26th, as you are going north, there is a steep bank with bushes and small trees on it.

Q. And as you look east from the center of the intersection [159] down Thomas, what do you observe, generally?

A. A residential district on both sides of the street.

Q. Is there a hill or is it level, or what is the general situation?

A. It slopes east and down eastward.

Q. What did you do when you arrived at that intersection?

(Testimony of Charles F. Du Puis.)

A. Mr. Fahey and Mr. Kirschner left the automobile and searched around the fire plug at 26th and East Thomas, and I backed my car part way down the block.

Mr. Chavelle: I will object to this observation, as to what he was told. He parked his car and backed away.

Q. (By Mr. Roberts): I want you to only testify as to what you, yourself, did or observed at that time.

Mr. Chavelle: He placed himself in the car and was backing away. Now he is testifying to what was told to him.

The Court: The objection is overruled.

A. I got out of the car and rejoined Kirschner and Fahey, and I assisted in searching around the plug, and then I got—we got back in the car and turned right, on East Thomas, part way down the block, and I turned my lights out. [160]

Q. (By Mr. Roberts): Approximately what time of the day was this, Mr. Du Puis?

A. Right around 10:00 p.m. in the evening.

Q. After you turned your lights out, what happened?

A. We had a conversation, the three of us, and I observed someone in the rear view mirror of my car coming down the steps, and Kirschner—I drew the attention of that to Kirschner and Fahey, and they left the car. So then I coasted down to 27th and East Thomas with my lights out.

Q. What did you do?

(Testimony of Charles F. Du Puis.)

A. I turned around at the intersection there. I had to back up once, and I came back up the hill, and I turned my lights on, and as I came up the hill my lights flashed on a man wearing a light top-coat. He was on the first landing of the steps running towards East Madison.

Q. Did you recognize that man as anyone you had seen prior to that time? A. Yes; I did.

Q. Who was he? A. Mr. Blassingame.

Q. Did you know Sam Blassingame on the evening of June 19th?

A. I have known him for a long time.

Q. About how long? [161]

A. About five or six years.

Q. Have you had occasion to see him many times in the past?

A. Yes; I have seen him several times.

Q. Is there any possibility you could be mistaken in your identification of him at that time?

A. No, sir.

Q. After seeing him on the steps, what did you do?

A. As I was saying, I came up the—drove up west on East Thomas. Mr. Kirschner and Mr. Fahey had gone by the fireplug.

As I came up, Mr. Kirschner called to me and I left the vicinity.

Q. And then what did you do?

A. I drove down south three or four blocks, and east a block or two, and waited a few minutes, and then I came back to the fireplug.

(Testimony of Charles F. Du Puis.)

Q. Then what did you do?

A. I got out of the car. Mr. Fahey took me over to the fireplug. He flashed his flashlight at the base of it, and there was a rubber container sitting at the base of the fireplug with some white powder in it.

Q. And then what happened?

A. Mr. Fahey picked up the container and we initialed it, and came down to the Seattle police station, Narcotics [162] Bureau, and Mr. Fahey, I believe, got the powder to dust the package for fingerprints.

Q. At this point, Mr. Du Puis, I will ask you to examine the contents of Plaintiff's Exhibit Number two, and state if you recognize it?

A. I do.

Q. What is it?

A. This is the package Mr. Fahey picked up from the fireplug at 26th and East Thomas on the night of June 19th, 1956, at approximately 10:10 p.m.

Q. How are you able to be definite about that statement?

A. It has my initials, "C.D.," on the rubber container.

Q. Will you examine the envelope itself and tell us whether or not your handwriting appears thereon?

A. My handwriting does appear thereon.

Q. Do you recall when you put your handwriting on it?

(Testimony of Charles F. Du Puis.)

A. The 19th of June, 1956, at 11:45 p.m.

Q. And when did you last see this particular exhibit?

Mr. Roberts: Strike that. I will ask another question.

Q. (By Mr. Roberts, continuing): In whose custody, if you know, was this exhibit retained after it was picked up from the fireplug? [163]

A. As far as I know Mr. Fahey had it.

Mr. Roberts: I have no further questions.

Cross-Examination

By Mr. Kosher:

Q. Now, do I understand that when you got to this area, where there was this stairway, that you say you noticed a man upon the landing or one of the landings there; is that correct?

A. I didn't say that, counsel.

Q. Where did you first notice this man coming down the stairway?

A. After the fireplug had been searched, I was parked on East Thomas facing east, and I noticed him in the rear-view mirror of the car.

Q. How far away from—how far away was the car from where this man was you claim you saw and recognized?

A. Let's not confuse the question, please, sir. Are you asking when I saw him, and could identify him, or when I saw the man the first time?

Q. When you first saw the man through your

(Testimony of Charles F. Du Puis.)

rear-view mirror, how far away from this man were you?

A. I was about three-quarters of a block down the street and part of the stairway. [164]

Q. In other words, you looked through your rear-view mirror from three-quarters of a block away, and part of the stairway, and you saw a man, is that right?

A. I saw a man; that is right.

Q. All right. Is it possible there were some other people around there at that time and you wouldn't see them?

A. That is quite correct.

Q. There could be a lot of people at the base of the landing and you wouldn't have seen them, isn't that right?

A. No.

Q. Why isn't that possible?

A. Because I just searched the fireplug and when we had driven east on Thomas it couldn't have been a matter of ten seconds, and the men were getting out of the car, and I noticed a person coming down.

Q. Is it a wooded area right around this stairway?

A. That is right.

Q. Is it possible there could be a person or persons concealed in this wooded area?

A. I wouldn't know.

Q. It is possible, is it not?

A. That is possible; sure.

Q. All right. Now, this fire hydrant that you have reference to, how close is it to the foot of the stairway that you have described? [165]

(Testimony of Charles F. Du Puis.)

A. Well, it is—again, it is purely an estimate—it is diagonally across the corner of the intersection.

Q. In other words, there is the sidewalk at the foot of the stairway, and then there is the street; isn't that right?

You have to cross the street diagonally?

A. That is correct.

Q. And across the street, whatever length that is, there is a fire hydrant; isn't that correct?

A. That is correct.

Q. Was it dark when you went out there?

A. It was night, 10:00 p.m.

Q. Ten o'clock at night; were there any street lights there?

A. Yes, there is three bright lights on East Madison.

Q. On East Madison? A. Yes.

Q. And where did you say the hydrant was—what street? A. 26th and East Thomas.

Q. How many street lights are there on 26th and East Thomas?

A. There is one that I know of, as I recall.

Q. Where is that at?

A. It is an overhead light, but I don't even recall [166] if that was burning or not.

Q. It is possible it could not have been burning?

A. That is quite possible, yes.

Mr. Kosher: I think that is all.

Q. (By Mr. Kosher): Now, did you see another man arrested in that area some time after ten o'clock?

(Testimony of Charles F. Du Puis.)

A. I didn't see a man arrested, but he was arrested and in custody when I returned.

Q. Who was that man?

A. I can't recall his name.

Q. Was it Sam Blassingame? A. No.

Q. Was it a colored man? A. Yes, it was.

Q. Did you see that man when you were looking through your rear-view mirror? A. No.

Q. From the time you looked through your rear-view mirror and the time you saw this man in custody, how much time elapsed?

A. Possibly ten minutes.

Q. And you were in that immediate area at all times, were you, during that ten-minute period?

A. No, I wasn't. [167]

Q. Well, when were you outside of the view of the stairway in that ten-minute period?

A. I was out of view of the stairway while I was making a U-turn with the car, possibly ten or fifteen seconds, and after I drove away after Sam left the area, I was gone five or ten minutes. So, ten minutes, at the maximum, I was out of view and out of the vicinity of the fire plug.

Q. But the man had already been arrested when you returned, is that correct?

A. That is correct.

Q. And you don't know how long he had been arrested by the time you got back?

A. I have no idea, no.

(Whereupon, there was a brief pause.)

Mr. Kosher: That is all.

Mr. Roberts: I have no further questions.

The Court: That is all, Mr. Du Puis.

(Witness excused.)

Mr. Roberts: We will call Mr. Kirschner. [168]

C. F. KIRSCHNER

upon being called as a witness for and on behalf of the plaintiff, and upon being first duly sworn, testified as follows:

The Clerk: Will you state your full name and spell your last name, please?

The Witness: C. F. Kirschner, K-i-r-s-c-h-n-e-r (spelling).

Direct Examination

By Mr. Roberts:

Q. What is your occupation, Mr. Kirschner?

A. Detective, Narcotics Detail, Seattle Police Department.

Q. How long have you been so employed?

A. Sixteen years with the Police Department, twelve years in the Detective Division.

Q. Were you so employed during the months of May and June, 1956? A. Yes, I was.

Q. Directing your attention to on or about May 29, 1956, state whether or not you met Johnny Clark on or about that date?

A. Yes, on that particular night I met him at the King Street station. [169]

(Testimony of C. F. Kirschner.)

Q. Approximately what time of the evening was it?
A. Nine o'clock.

Q. Who was with you, other than Clark?

A. On that night it was, I believe, Detective Henaby and myself that met him.

Q. What did you do after meeting him?

A. We went up to 7th and Madison and met the Federal Agents.

Q. Who was present, if you recall?

A. As I recall, it was Mr. Fahey and Mr. Gooder, and then Waitt, Sprinkle, Henaby and myself.

Q. And what did you do?

A. We went to 19th and Roy from there.

Q. What happened there, Mr. Kirschner?

A. At 19th and Roy, Johnny Clark made a phone call. Detective Sprinkle listened on the phone. And from there we proceeded to depart from that place.

Q. All right. Did you depart that area?

A. Yes.

Q. What did you do?

A. We went with Mr. Fahey, and it was Mr. Fahey and Mr. Henaby and myself, went to 22nd and Thomas, or, it would be the northwest corner.

Q. What did you do there?

A. We sat there until we viewed Mr. Clark and Mr. [170] Waitt and Sprinkle drive down one-half block below us.

Q. They were in another automobile?

A. They were in another automobile.

Q. What happened after that happened?

(Testimony of C. F. Kirschner.)

A. Mr. Clark and Mr. Sprinkle got out of their car. Mr. Clark stayed on the sidewalk and came up 22nd Avenue going north and turned east on Thomas, and walked down the hill, and Mr. Sprinkle cut off and went in a lot on the side beside him, parallel, and Mr. Clark went into the rear of 231-23rd North, and he knocked on the door.

Q. Was that during your line of vision or sight?

A. Yes, it was.

Q. And what did you observe as he went and knocked on the door?

A. I observed him knock on the door, and he waited a minute or two, and then the door was opened, and it was opened by Mr. Blassingame, and he and Johnny Clark went in the house.

Q. And then what happened?

A. We waited there. That was about 9:40 p.m., and maybe four or five minutes later a car came by the front of us there, and I recognized a girl I knew at that time named Chinkie Johnson, driving an Oldsmobile; and she ran in the house for approximately two or three minutes, and then she turned around and came out, and she passed [171] this way—and she drove off in her car, and she passed this way, and then it was at 10:01 Johnny Clark came back out of the house, and he walked up Thomas Street to 22nd.

Q. At the time he came out of this house, who, if anyone else, did you observe at that door?

A. Sam Blassingame was standing at the door when Johnny Clark came out.

(Testimony of C. F. Kirschner.)

Q. Are you sure about that?

A. Absolutely.

Q. How could you be sure it was Sam Blassingame?

A. I had a good view. The light was on the adjoining porch—not house, it is a continuous porch. There was a little fellow out on the other side of it mopping or sweeping out there.

Q. And would you recognize that fellow again if you saw him?

A. Possibly. He reminded me, from where I viewed him—I never saw him before—he looked like an Oriental, Japanese or possibly a light-skinned Negro.

Q. Will you tell the jury how you were able to so positively identify Mr. Blassingame?

Mr. Chavelle: I object, your Honor. Asking an opinion question.

Mr. Roberts: I am asking for the fact.

The Court: Objection overruled. [172]

A. I have known Sam Blassingame for possibly eight years, and talked to him numerous times.

Q. (By Mr. Roberts): All right; after Johnny Clark left the apartment, what then did you do?

A. We viewed Johnny Clark until he got to the other car, and Mr. Waitt and Sprinkle and Mr. Gooder were in, and we saw him enter the car then and we drove off and went to the Federal Building, or to this particular building, and the Federal Narcotics Office.

Q. What did you do there?

(Testimony of C. F. Kirschner.)

A. We viewed Mr. Fahey take a statement from Mr. Clark.

Q. Will you describe who was present, if anyone other than yourself and Mr. Fahey, at the time the statement was taken from Mr. Clark?

A. There was Mr. Waitt, Sprinkle, Henaby and myself and Mr. Fahey and Mr. Gooder there.

Q. Pardon me. I am writing here. Would you remind repeating a little slower the names?

A. The four Seattle Police officers, Waitt and Sprinkle and Henaby and myself, and then of the Federal Agents there was Mr. Gooder and Mr. Fahey.

Q. And that was the same evening?

A. That was the same evening, yes. [173]

Q. Incidentally, what were the weather conditions in this City of Seattle on May 29, 1956, if you recall?

A. It was clear. It was clear, an average evening. It had been a nice day that day.

Q. Now, inviting your attention to on or about June 19, 1956, state whether or not you met with Johnny Clark on that date?

A. Yes, at nine o'clock p.m. we met Johnny Clark, Detective Sprinkle, Detective Henaby and myself, met Johnny Clark, at the King Street station.

Q. What did you do?

A. We again went to 7th and Madison and met the Federal Agents.

Q. Then what happened?

(Testimony of C. F. Kirschner.)

A. After a short conversation there with all the agents and Mr. Clark, then Mr. Fahey and Mr. Du Puis and myself left the scene.

Q. And where did you go?

A. We went to 26th and Thomas; 26th North and Thomas.

Q. Could that have been 26th North and East John? A. No; 26th North and East Thomas.

Q. And what does that intersection look like?

A. It is only two streets, actually. It is not a four-way intersection. 26th Avenue runs—if you were going [174] in a northerly direction, you would have to turn at Thomas to the right, or turn east. Thomas is heading west there. You would have to turn south on 26th. There is only one corner. The rest is more or less of a radius.

Q. As you look west from the center of that intersection, what do you observe?

A. If you look west from there, what do you observe? Oh, a flight of stairs going to East Madison Street.

Q. What lights are in the area?

A. One light at the bottom of the steps, an old-type light, and then on Madison Street there are three sodium vapor lights lighting the entire area for possible three-quarters of the way down the stairs.

Q. What was the light condition at the base of the stairs around that intersection?

A. It was dark—semi-dark. It wasn't too good.

Q. All right; in arriving there, what did you do?

(Testimony of C. F. Kirschner.)

A. Immediately on arriving there we went up and Mr. Fahey and I—Du Puis was driving—as we got there, we stepped out of the car and we searched the fire plug on the corner.

Q. What was the condition of the ground around the fire plug?

A. It was dry. There was grass around there close to the plug. It was beaten down, possibly one-foot to one [175] and one-half feet close to the plug, like it had been trimmed at one time, and then the grass gradually tapered up to two feet, and sometimes three feet on the parking strip.

We searched this area six feet around the plug very thoroughly.

Q. And then what did you do?

A. We got in the car and went down the hill, and went down Thomas Street and crossed the alley, and as we crossed the alley we stopped the car and had a discussion, and I stepped out, and Mr. Du Puis drew my attention to the stairway.

Q. Can you approximate and tell us the length of time that elapsed from the time you first left the fire plug and your examination until the time you left the car down below the hill?

A. It wouldn't be over two minutes.

Q. Did you have a view of the intersection during that intervening time? A. Yes, we did.

Q. What, if anything, did you do concerning a view of that intersection as you were going down the hill?

A. We kept it in constant view all the time.

(Testimony of C. F. Kirschner.)

Q. Why?

A. We believed someone else was coming there.

Mr. Chavelle: I will object to that and [176] ask that it be stricken.

The Court: The motion is denied.

Q. (By Mr. Roberts): All right; you got out of the car. What happened then?

A. I got out first, and immediately upon getting out, due to Mr. Du Puis' drawing my attention to the stairway, I saw someone coming down the stairway, and, as I got out, I could hear Mr. Fahey getting out behind me, and I went up and kept to the left of the sidewalk, and the lawns over this place are gradually terraced. I continued to go within fifty feet of the corner where the last terrace is raising to the fire plug, and at that point I could feel or see—I don't know how to express it, but there were some lights behind me, and I thought a car was coming, and I flattened out on the terrace, and I was from here to the back of the courtroom, or probably to the back bench, from the corner; and at that point there I laid and watched Mr. Blassingame come over.

Q. Tell us what you first observed from that distance?

A. I saw Mr. Blassingame just coming to the fire plug.

Q. Was he across the street?

A. He was just at the fire plug. I flattened [177] right out, and that was my first observation.

Q. What did you then observe him do?

(Testimony of C. F. Kirschner.)

A. Pardon?

Q. What did you observe him do?

A. He stopped by the fire plug and then he turned and immediately went back to the steps.

Q. Was he running, or walking?

A. I would say going pretty fast, at a real fast walk, going to the steps.

Q. And then what happened?

A. Then he went up possibly seven or eight steps, and then he stopped and turned around.

At the time that this car that was approaching up the hill had his headlights on Mr. Blassingame, and he turned and went to the second landing, and there he stopped and looked, and then he got to the head of the steps, and paced back and forth, and by that time Mr. Fahey came up to me and the two of us went over in some brush on the corner, and he was approximately one hundred feet from us on Madison Street on the sidewalk.

Q. And then what happened?

A. He walked back and forth there for possibly thirty seconds looking down, and then he got into a car.

We could see the top of the car, and we heard the door slam. [178]

Q. After that, what did you do?

A. We went back to the fire plug and leaning on the left side of the fire plug was a rubber container filled with white powder.

The Court: Mr. Roberts, how much longer?

(Testimony of C. F. Kirschner.)

Mr. Roberts: I must advise the Court it will probably be ten minutes more.

The Court: We will recess.

Members of the Jury:

We will now recess until tomorrow morning at ten o'clock. The Court calls your attention to the admonition given you earlier this morning, and asks that you heed it on this occasion.

Again, it is important to not reach any conclusions or form any opinions with respect to the merits of the case until you have heard all the evidence and the instructions of the Court, and when you are all leaving and at your homes it is not permissible to talk with your own families or anyone else while sitting on a case regarding the merits of the case. Tell them it is a narcotics case, if you wish, but that is as far as you can go, and it is necessary to refrain from disclosing to anyone any matters relating to the case until after the case has been decided.

You may now be excused until tomorrow morning, and be here at ten minutes to ten. [179]

(Whereupon, the jury retired from the courtroom.)

The Court: Court will recess until tomorrow morning at ten o'clock.

(Whereupon, at 4:38 o'clock p.m., January 15, 1957, a recess was had in the within-entitled and numbered cause until 10:00 o'clock a.m., January 16, 1957.) [180]

Jan. 16, 1957—10:00 A.M.

The Clerk: United States of American versus Sam Blassingame, Cause No. 49488, now on for further trial.

Mr. Roberts: The plaintiff is ready, your Honor.

Mr. Chavelle: The defendant is ready, your Honor.

Mr. Roberts: Your Honor, I have served one additional copy and have served a copy on the defendant, and given a copy to the Clerk.

The Court: You have a copy?

Mr. Chavelle: We have a copy, your Honor.

The Court: You may call the jury.

(Whereupon, the jury was returned to the courtroom.)

The Court: You may be seated.

It is stipulated that the defendant and the jury are present in the courtroom?

Mr. Roberts: So stipulated

Mr. Chavelle: So stipulated, your Honor.

The Court: You may proceed.

You are still on direct testimony, is that correct?

Mr. Roberts: Yes, your Honor, I believe I [184] was.

C. F. KIRSCHNER

upon being recalled as a witness for and on behalf of the plaintiff, and having been previously duly sworn, testified as follows:

Direct Examination (Continued)

(Testimony of C. F. Kirschner.)

By Mr. Roberts:

Q. Mr. Kirschner, as I recall, when we left off yesterday afternoon, you had just testified that after having seen Mr. Blassingame go up the stairs, you and Mr. Fahey, on the evening of June 19, 1956, were standing at the base of the stairs at the intersection of what you testified to as 26th and East Thomas, and you were observing the defendant walking back and forth at the head of the stairs on Madison Street.

What, then, did the defendant do?

A. The defendant got into an automobile that was parked down forty or fifty feet, I would judge, on Madison Street, and he got into a car and sat on the right-hand side of the car and the car proceeded down Madison Street.

Q. How are you able to say he sat on the right-hand side of the car?

A. You could see him there as the car took off.

Q. Can you describe the car as to make and model?

A. It was a light colored car; it could have been blue or green, but the sodium vapor lights kind of make the [185] colors a little different than what they really are. I couldn't definitely say for sure.

Q. At the time you observed him at the head of the stairs, why didn't you go and make an arrest?

A. We wanted to make certain that the evidence was what we expected had been left at the base of the fire plug. We wanted to make sure and to test it.

(Testimony of C. F. Kirschner.)

Q. What do you mean by that? I want you to explain.

A. We wanted to be positive it was heroin that had been left at the plug.

Q. Now, at this point, how much time had elapsed, in your estimation, from the time that you first arrived at the fire plug until the time you saw Mr. Blassingame leave in an automobile?

A. Oh, I would say in the vicinity of maybe six minutes.

Q. Now, would you break that down as best you can for the jury as to the time involved in each of the steps along the way from the time you investigated the plug area?

A. Well, we first pulled up to the plug, and we were there approximately from the time we parked and Mr. Du Puis got up and assisted us in the search, and we looked around there possibly one and one-half minutes, and maybe two minutes. Then from there we drove down the hill and we discussed this as we went down the hill, and we got to [186] the alley and stopped just across the alley, and as we stopped I started to get out of the car, and immediately Mr. Du Puis drew my attention to the stairway; and, as I had been keeping the plug under surveillance, I wasn't paying attention to the stairway, and I started then to run up, and I imagine I was up there, three and one-half minutes from the time I saw Mr. Sam come down and run up the steps and get in the car, would take up the remainder of the time. Actually Mr. Blassingame was

(Testimony of C. F. Kirschner.)

in our sight maybe three minutes at the most.

Q. Now, with particular reference to the time after searching the plug and you re-entered the car and drove down on Thomas Street and returned over one-half block, how much time elapsed in that time?

A. Oh, we drove down the street about, probably ten or fifteen miles an hour and stopped the car, and I got out at that time and was standing by the side of the car looking at the plug, and that probably would have taken ten or fifteen seconds to get down there, and it was practically immediately after getting out of the car that Mr. Du Puis spoke up, and I ran up the left-hand side.

Q. And did anyone else during that interval of time, from the time you left the plug until you returned to it, come into the plug area? A. No.

Q. How are you able to be definite on that? [187]

A. I could see the top of the plug.

Q. Could you see the entire plug?

A. No, not the entire plug.

Q. Was it possible someone could come into the plug area?

A. If they crawled, it would have been possible.

Q. Now, after Mr. Blassingame left in the car down Madison Street at the head of the stairs, what then did you next do?

A. We went up to the plug, Mr. Fahey and I, and at that time we put our flashlights in the plug area.

Mr. Chavelle: This was all gone into yesterday, your Honor, step by step.

(Testimony of C. F. Kirschner.)

The Court: With this witness?

Mr. Chavelle: What he is covering now, yes. He is going into what was testified to yesterday with the flashlight and going around beneath the plug.

Mr. Roberts: My recollection is I thought we left off yesterday when they just saw Mr. Blassingame leaving the car at the head of the stairs and returned to the plug.

The Court: That is my recollection. My notes don't indicate any detail on this. Objection overruled. You may continue.

A. (Continuing): Mr. Fahey and I went to the plug [188] and then played our flashlights at the base of it and on the left-hand side, leaning—on the north side of the plug, actually—against it there was a rubber container approximately this big and so wide (indicating). It was leaning on the plug and we viewed it, and Mr. Du Puis at that time was not there and we wanted him to view it in this position, and so we waited until he came back.

Q. (By Mr. Roberts): At this time I will ask you to examine Plaintiff's Exhibit No. 2, the contents of the envelope, and state what it is, if you know?

A. This is the rubber container that we found at the base of the plug. My initials are here in green ink, "C. K.," and at the same time Charlie Fahey and Charles Du Puis placed their initials on it.

Q. At the time you saw that, state what tax stamp or stamps of any kind were attached to it?

A. There were no tax stamps. It was in the same

(Testimony of C. F. Kirschner.)

condition as this except for the initials and printing done on it by the officers.

Q. Who had that in their possession after you left the plug, if you know? A. Mr. Fahey.

Q. Now, after you returned to the plug from across the street at the base of the stairs, and played your flashlight around and saw this rubber container, what next did [189] you do?

A. We went to the bottom of the stairs, and at that time I called to Mr. Du Puis and stated that they appeared to be coming around the block, and that is when Mr. Du Puis took off and we waited at the base of the stairs.

Q. Where on the stairs or around them were you, specifically?

A. Just within, I believe, about three steps up on the left-hand side of the stairway.

The brush hangs over on that point.

Q. What were you doing at this point?

A. We were trying to conceal ourselves.

Q. Then what happened?

A. About two minutes later a car did come by.

Q. In what direction did it travel?

A. We could see it coming south in 27th Avenue, and then it turned west on Thomas Street, and came up Thomas to 26th, and then went south on 26th.

Q. And the car then continued out of the area?

A. The car continued out of the area.

Q. Did you recognize the car?

A. We weren't trying to be seen. We were trying to hide ourselves.

(Testimony of C. F. Kirschner.)

I didn't recognize the car, no.

Q. All right; and you say that was about [190] two minutes. And then what next happened?

A. Just a little bit before Du Puis came up we waited maybe five minutes for Mr. Du Puis to show right across from the plug, and we saw another car coming up the hill at the time.

Q. What hill? A. Thomas Street.

Q. The same direction as the other car?

A. Yes, coming west.

At that time the car came up, and Mr. Fahey and I were out in the open a little more then.

Q. Where were you standing at the time?

A. We were on the stairway.

Q. In the same position you had been?

A. Generally, except we were over farther, in plainer view.

Q. What were you doing?

A. When this car came up, what we actually did, we put on a drunk act, Mr. Fahey and I, and turned our sides to him trying to avoid being identified ourselves.

Q. And then what happened?

A. Well, this car went right past us and pulled up real quick, and a man got out of the side.

Q. Where did he pull up?

A. About fifty feet north of us, or south [191] of us.

Q. On what street? A. On 26th.

Q. And on what side of the street?

A. On the west side of the street, on the same side we actually were on.

(Testimony of C. F. Kirschner.)

Q. And then what happened?

A. He got out of the car on the driver's side, and came directly to the sidewalk, and came directly towards us and came around the corner and pulled a gun out, and I disarmed him, and we arrested him.

Q. Who was this man?

A. His name was Andrew Leed.

Q. Did you know him?

A. Never saw him before, no.

Q. Have you since learned about him?

A. He was arrested that night, and we held him for a day and a half investigating him.

Q. What was the charge?

A. He was charged with carrying concealed weapons.

Q. What have you learned about his background from that day to this?

A. He is steadily employed by the Fuller Factory Service, and has been for nine years, and he is still, to my knowledge, working there.

Q. What involvement, if any, did you discover he had [192] in the traffic of narcotics?

Mr. Kosher: I will object to that on the grounds it is obviously hearsay.

Mr. Roberts: I am inquiring of a police officer, and possibly I should qualify the question, your Honor, with this preface:

Q. (By Mr. Roberts, continuing): In the course of your business as a narcotics officer with the Police Department of the City of Seattle, have you come to

(Testimony of C. F. Kirschner.)

know of this man in any way with the involvement of narcotic traffic in this city?

A. No, I have not.

Mr. Kosher: The same objection.

The Court: Objection overruled.

Q. (By Mr. Roberts): What kind of a car was this man driving?

A. He was driving a dark blue Pontiac.

Q. A dark blue Pontiac; was it the same car that you observed Mr. Blassingame in?

A. No, the car that Mr. Blassingame was in was a light car.

Q. How much time elapsed from the time you observed Mr. Blassingame leave Madison Street up until the time this man pulled up?

A. Oh, seven or eight minutes. [193]

Q. Now, then, after you arrested this man, what next happened?

A. Well, Mr. Du Puis showed up, and when he showed up I placed the man in the back of Mr. Du Puis' car, and he parked right there, and then Mr. Du Puis and Mr. Fahey and I went to the plug, and Mr. Du Puis viewed this particular rubber container; and that time Mr. Fahey picked it up and we initialed it.

Q. And then what did you do?

A. We all got in Mr. Du Puis' car and drove to Police Headquarters, and at that time I booked the other man.

Q. Now, Mr. Kirschner, from May and June of 1956, to this date, in the interval of time, state

(Testimony of C. F. Kirschner.)

whether or not you have ever discussed the facts of this case with the defendant, Sam Blassingame?

A. Yes, I have.

Q. Where did that discussion take place?

A. In his apartment.

Q. Was there more than one discussion?

A. No, there was just one.

Q. And where is his apartment located?

A. I believe the address is 118-25th North.

Q. And when did this discussion take place?

A. Approximately October 3rd.

Q. And what were the circumstances leading to the [194] discussion?

A. We had gone across the court. Mr. Blassingame at the time was living in a more or less of a bungalow court, and across the court is a fellow named Wally Hanks.

Q. Who is "we"?

A. Two investigators from Portland, Detective Henaby and myself.

Q. What was your purpose?

A. Our purpose was to serve warrants at the other apartment.

Q. All right; what happened when you went to the other apartment?

A. We went over to the other apartment. We were interrogating Mr. Hanks, and Mr. Larry Johnson stated that Sam Blassingame wanted to see me, and Larry, in turn, went over to Sam Blassingame's apartment and came back in a few minutes, and said, "Sam is there," and told me to go on over.

(Testimony of C. F. Kirschner.)

I went over, and I told Mr. Henaby I was going over to see Mr. Blassingame for a few minutes.

I went over there, and Sam opened the door and shook hands.

Q. Does he know you?

A. Yes, he knows me.

Q. How long have you known Sam? [195]

A. Seven or eight years.

Q. What was said by you and by him at that time? Who else, other than yourself and Mr. Blassingame, were present in the apartment?

A. No one, just Sam and myself.

Q. And, once again, what was the date of this?

A. This was, I believe, October 3rd.

Q. 1956? A. 1956, yes.

Q. All right; what was the conversation?

A. When I came in the apartment, I remarked to Sam that he did not have much furniture in the place, or didn't have any, and he said he was making arrangements that day to get furniture; and then he asked me what I thought of the case, and he asked me about the dates, and I said, "I am not too familiar about the dates. The only dates I recall were the 29th, due to the fact it was my birthday that night."

Then he says—and then I asked him, "Who do you think made you, Sam"?

And he stated, "Johnny Clark is the only man that could have made me."

Then I asked him, "Well, you should have been more attentive to your business, Sam."

(Testimony of C. F. Kirschner.)

And he said, "What do you mean?" And I said, "You should pay more attention to your [196] business."

And he said, "You mean the night at the fire plug?"

And I said, "I thought sure you had seen one of us." And he said, "I did." And he said, "I saw you." And I said, "Who did you see, Sam?" And he said, "I saw you and saw—." Oh, it was, the conversation in whole was more or less of a—I was trying to pump Sam, and Sam was trying to pump me.

Then we talked about other mutual acquaintances, and the conversation more or less went along that line; and then I was there possibly ten minutes, and Sam shook hands with me, and I left.

Q. What, if anything, was said by Sam or by you about Johnny Clark testifying in a case against Sam?

A. He stated that he, in his belief, didn't think Johnny Clark would testify against him, because when Johnny got out of the penitentiary he had been like a brother to him, and treated him real good.

Q. Is that, in substance, the conversation in this case?

A. That was part of the whole conversation.

Mr. Roberts: I have no further questions, your Honor.

(Testimony of C. F. Kirschner.)

Cross-Examination

By Mr. Chavelle:

Q. Mr. Kirschner, directing your attention to the [197] date of May 29, 1956, I believe you stated that you placed yourself in a position where you could view the duplex?

Directing your attention to the date of May 29, 1956, I believe you testified on direct examination that you placed yourself in a position where you could view the duplex where Johnny Clark supposedly was sent into?

A. That is correct.

Q. And I think you testified you saw a woman called Fitzgerald, or "Chinkie" Johnson, enter the apartment or duplex? A. That is right.

Q. You have been in police work a long time, and you are acquainted with Miss Fitzgerald, also known as "Chinkie" Johnson?

A. That is correct.

Q. Tell us about her background as far as narcotics is concerned or prostitution?

A. As far as her background is concerned, Mr. Chavelle, I don't know too much about it except she was a girl friend of Sam Blassingame's at the time, and she came to my attention first at this time.

Q. And did you know her before, as far as being associated with narcotics addicts, or a user?

A. No, the first thing I knew of her, her name

(Testimony of C. F. Kirschner.)

came up as the girl friend of Sam [198] Blassingame.

Q. Did you know her that night when you saw her?
A. Yes, I did.

Q. And you knew her prior to May 29, 1956?

A. I had made it a point to introduce myself to her.

Q. And was she a prostitute, do you know?

A. I do not know from my own knowledge.

Q. How long was she in the house that night?

A. I would judge two minutes.

Q. She came in and stayed there about two minutes?

A. That is right, from the time she went through the door and came back out.

Q. She had entered and left before Johnny Clark came out, is that right?

A. She was there—she was in there at the same time Johnny Clark was in the house.

Q. And Johnny Clark was still there after she left?
A. That is right.

Q. How steep a grade is that hill on east?

A. Oh, probably 10 per cent grade.

Q. You say 10 per cent grade?

A. Well, I am not a very good judge of grades.

Q. Could it be 35 per cent grade?

A. No, I don't think it would be 35 per cent grade.

Q. Is it quite a steep hill?

A. Oh, it would be about the same as on Madi-

(Testimony of C. F. Kirschner.)

son [199] Street, between 5th and 6th Avenues, alongside this building.

Q. How far is that hydrant located from the corner of the intersection there; how far?

A. I think you are confused, Mr. Chavelle. We are at two different—are we talking about Chinkie Johnson's?

Q. No, I am talking about East Thomas Street. Are you telling me about some other corner?

A. I was telling you about the corner where Johnny Clark went in.

Q. Let's go back to the corner on East Thomas.

A. 26th and Thomas?

Q. Yes.

A. That is about a 15 per cent grade.

Q. 15 per cent grade? A. Yes.

Q. Not 35 per cent? A. No.

Q. How far is the hydrant south of the intersection there?

A. It would be from the actual curb line of East Thomas Street, it would be probably ten feet south and about one foot in from 26th— one foot to one and one-half feet in from 26th. That would be east of the 26th curb line, about four feet from the sidewalk.

Q. Is it a residential district of homes [200] throughout that vicinity?

A. Throughout the particular vicinity, but not in that exact location. It was not very well—it is empty lots there.

(Testimony of C. F. Kirschner.)

Q. Located in front of some residential property?

A. No, the closest one is about a city lot away.

Q. There are homes near the fire plug?

A. There are homes in the block, but on Thomas Street it would be possibly 100 feet south of there—that would be on 26th, and the closest home on East Thomas, the first house down would be, I believe it is a small—a short lot in between, and then the first house.

Q. Isn't it a fact that there is a house not less than 15 feet away from that plug?

A. Fifteen feet away from the plug? No, there wouldn't be a house that close.

Q. Are you sure of that?

A. I am sure of that.

Q. You are positive?

A. Positive, Mr. Chavelle.

Q. The stairway referred to, is that about one city block long?

A. It would be about, oh, 100 feet.

Q. 100 feet long? A. 100 feet long. [201]

Q. When the car came to a stop, that was about 60 feet down East Thomas Street?

A. About 40 or 50 feet down the hill.

Q. And you say he would be approximately 160 feet away from the top of the stairway, where the car was stopped?

A. I didn't understand.

Q. You say it would be 160 feet away from the

(Testimony of C. F. Kirschner.)

top of the stairway to where the car was located when stopped?

You say you stopped down by the alley, is that correct? A. Yes, that is right.

Q. Now, I am asking you, from the alley to the top of the stairway how many feet is it?

A. One-half a city block to the base of the stairway, and another 100 feet to the top.

Q. Now, you stated, Mr. Kirschner, no arrest was made until you could determine what Plaintiff's Exhibit No. 2 contained, whether or not it was heroin, is that right? A. That is right.

Q. When was it determined that this Plaintiff's Exhibit No. 2 contained heroin?

A. When we went down to the office we made what is called a field test on it, I think a Marquis reagent, and it showed it was an alkaloid, and at that time it was [202] determined it was heroin.

Q. June 19, 1956, you determined this package contained heroin? A. That is right.

Q. And when was the arrest made in this case?

A. I believe it was made September 27th.

Q. Yet you stated the reason you didn't make the arrest that night was because you wanted to test this package, and you did determine it contained heroin, and no arrest was made until September 27; is that correct? A. Other reasons came up.

Q. I thought you testified on direct examination the only reason you didn't arrest him was until you learned what was at the fire plug?

A. That was the reason that night.

(Testimony of C. F. Kirschner.)

Q. He was available at all times for arrest, was he not? A. Yes, he was.

Q. Subsequent to June 19, 1956, and also subsequent to May 29, 1956? A. Yes.

Mr. Chavelle: That is all, sir.

Redirect Examination

By Mr. Roberts:

Q. What other reasons, Mr. Kirschner, came up, that [203] caused you not to arrest Sam Blassingame shortly after June 19th?

A. Due to using Johnny Clark, we didn't want to divulge that he was our informant in the case.

Mr. Roberts: I have no further questions.

Mr. Chavelle: That is all, sir.

(Witness excused.)

Mr. Roberts: Mr. Henaby. [204]

WILLIAM E. HENABY

upon being called as a witness for and on behalf of the plaintiff, and upon being first duly sworn, testified as follows:

The Clerk: Will you state your full name and spell your last name, please?

The Witness: William E. Henaby, 11027 Palatine Avenue.

Direct Examination

By Mr. Roberts:

Q. What is your occupation?

(Testimony of William E. Henaby.)

A. Police Detective, employed by the City of Seattle.

Q. Any specialty with the Police Department?

A. Yes; with the Narcotics Detail.

Q. How long have you been employed as a police officer with the City of Seattle?

A. About nine and one-half years.

Q. Directing your attention to on or about May 29, 1956, state whether or not you met at 19th and Roy with other officers and one Johnny Clark?

A. Yes, I did.

Q. What happened previous to that time?

A. After arriving there Detective Sprinkle and Johnny Clark went into a public phone booth. Clark made a [205] phone call, and I then proceeded to the intersection of 22nd and East Thomas.

Q. With whom?

A. With Agent Fahey and Detective Kirschner.

Q. And what did you do there?

A. Shortly after arriving there, another Government vehicle pulled up below the intersection, and at that time Johnny Clark emerged from the car and walked to a house at 231-23rd North.

Q. Did he walk alone to that house?

A. He walked alone. Detective Sprinkle was in the lot following him.

Q. Now, did you have a view of the house you just identified? A. Yes, I did.

Q. Will you describe what you observed and where you were parked at that house, and the distances involved?

A. The distance would be approximately one-

(Testimony of William E. Henaby.)

half of a downtown city block. It is a block in that area. They are short blocks.

Q. And what did you see as you looked towards this apartment?

A. I observed Clark and Sprinkle walk toward the house. Sprinkle, I don't think, approached any nearer than 30 feet of the back porch. [206]

Clark went to the door.

Q. Let me interrupt, and ask you what would you observe as you looked from your position of vantage toward the rear door?

What was around the rear area?

A. There was a vacant lot between our position and the back door.

Q. So that your view was obstructed, or unobstructed? A. It was unobstructed.

Q. As Clark approached the back door, what did you observe?

A. He walked up on the porch, and the door was opened by Mr. Blassingame.

Q. Did you recognize Mr. Blassingame at that time?

A. Yes, I did; and then he was admitted.

Q. Approximately what time of the day was this?

A. It was shortly after 9:30. I would say about 9:35, or 40.

Q. A.M. or P.M.? A. P.M.

Q. And then what happened?

A. While we were sitting there, an—about a 1954 Oldsmobile drove directly in front of us and

(Testimony of William E. Henaby.)

proceeded to East Thomas, and parked near the back entrance of 231-23rd North. A woman got out of the car, and went into the house, [207] and she was in there approximately two or three minutes, at the most.

Q. Did you recognize that woman?

A. I recognized her as Chinkie Johnson, a woman I knew.

Q. How long was she in the house?

A. Not over two or three minutes.

Q. And then what happened?

A. Then she emerged from the house and drove away.

Q. Then what happened?

A. Clark was in there perhaps ten minutes after she left. I think he was in there about twenty minutes. He returned to the door with Mr. Blassingame, and Mr. Blassingame—during the time they were in there, there was some gentleman that came out on the far porch of the adjoining apartment or duplex and he turned a light on, and was sweeping the porch off, and then approximately five minutes after that Mr. Clark came out with Mr. Blassingame at the door.

Q. Did you recognize it was Mr. Blassingame at that time? A. Yes, I did.

Q. Did you know him at that time?

A. Yes, I have known him for a long time.

Q. And then what happened? [208]

A. Then Clark walked over to the sidewalk on the south side of East Thomas and then walked west

(Testimony of William E. Henaby.)

to the intersection of 22nd and East Thomas, with Sprinkle following him up through the lot, and they walked to the Government vehicle.

Q. Now, directing your attention to June 19th, on or about that date, 1956: Did you have occasion to meet Clark again?

A. Yes. Detective Kirschner, Sprinkle and I met Johnny Clark at the King Street depot at approximately 9:00 or shortly thereafter.

Q. And later on in the evening did you——

Mr. Roberts: Strike that.

Q. (By Mr. Roberts, continuing): Briefly, what happened thereafter?

A. We had a prearranged meeting with members of the Federal Bureau of Narcotics at a parking lot at 7th and Madison, and we drove there and met Agent Fahey and Agent Du Puis. There were two other Government employees there.

There was James Clark, a United States—a Deputy United States Marshal, and a Clerk from the Federal Bureau of Narcotics, Lee Holt.

Q. What happened at that meeting?

A. At that meeting we had conversation [209] with Johnny Clark.

Q. Following your conversation, what happened?

A. Detective Sprinkle and I remained in the car with Johnny Clark.

Detective Kirschner, Agent Fahey and Du Puis departed from the parking lot.

Q. Now, did they thereafter return or rejoin you?

(Testimony of William E. Henaby.)

A. Yes, shortly after 10:00 o'clock they rejoined us. Kirschner and Fahey came back to the car I was seated in, and Fahey showed me an article he found while he had been gone.

Q. I will ask you to examine the contents of Plaintiff's Exhibit No. 2, and state what it is, if you know?

A. Yes, this is the article that Fahey showed me after they returned on that evening.

Q. How are you able to make that statement?

A. I have my initials on it. I also recognize the fingerprint powder that we applied to the article.

Mr. Roberts: I have no further questions.

Mr. Chavelle: No questions.

(Witness excused.)

Mr. Roberts: We will call Mr. Waitt. [210]

ROBERT W. WAITT

upon being called as a witness for and on behalf of the plaintiff, and upon being first duly sworn, testified as follows:

The Clerk: State your full name and spell your last name, please?

The Witness: Robert W. Waitt, W-a-i-t-t (spelling).

Direct Examination

By Mr. Roberts:

Q. So that all of the members of the jury can

(Testimony of Robert W. Waitt.)

hear your name, please state it again, louder, please?

A. Robert W. Waitt, W-a-i-t-t (spelling).

Q. Where do you live, Mr. Waitt?

A. 13219-1st Southwest, Seattle.

Q. What is your occupation?

A. Seattle Police Officer.

Q. And during the months of May or June, 1956, were you so employed? A. Yes, I was.

Q. Directing your attention to on or about May 29, 1956, state whether or not you met with one Johnny Clark during that day?

A. I did. [211]

Q. Where did you meet him?

A. I met him at the King Street station.

Q. Did you thereafter go to a rendezvous meeting at 7th and Madison in this city?

A. Yes, I did.

Q. Did you thereafter travel with other officers?

Mr. Chavelle: This is leading and suggestive. He can state what he did.

Mr. Roberts: Very well, Your Honor. I was merely trying to shorten the interrogation.

Q. (By Mr. Roberts, continuing): State whether or not at any time that evening you were at the corner of 19th and Roy Street in this city?

A. I was.

Q. Approximately what time of the day was it?

A. It was in the evening, approximately twenty minutes to ten; 9:40—somewhere in there.

Q. All right. What happened there?

A. At 19th and Roy?

(Testimony of Robert W. Waitt.)

Q. Yes.

A. I arrived there at 19th and Roy in a Government automobile driven by Sam Gooder. In the car was myself, Detective Sprinkle, and Johnny Clark.

Q. Will you speak up loudly so that we [212] can all hear you?

A. I stayed in the car. Johnny Clark and Detective Sprinkle got out of the car and went to a phone booth. They came back in a few minutes. There was a conversation, a short conversation, and the four of us then proceeded to the vicinity of 21st and Roy.

Q. Now, then, who are the four of you, once again?

A. Detective Sprinkle, Agent Gooder, Johnny Clark and myself.

Q. What did you do at 21st and Roy?

A. At 21st and Roy I removed Johnny Clark's coat, sport coat or suit coat, and with his assistance I removed his shirt. He was wearing a white shirt. I removed his shirt, and Detective Sprinkle helped me, and we put on him a small recording device.

Q. What was Mr. Gooder doing at the time?

A. Mr. Gooder was searching the person of Johnny Clark.

Q. Will you describe what you observed concerning that search?

A. As I was in the process of putting on this wire recorder, Detective—Agent Gooder was searching the person of Johnny Clark. Johnny unbuttoned, unloosened, his belt from his pants, and Agent

(Testimony of Robert W. Waitt.)

Gooder put his hands inside his pants and searched around the middle part of his waist. [213]

Q. Did you observe whether or not Agent Gooder observed the lower extremities?

Mr. Chavelle: Leading and suggestive. You can ask what he did.

Q. (By Mr. Roberts, continuing): What else did you observe concerning the search?

A. As I continued to do what I was doing, I saw Agent Gooder patting Johnny Clark's legs, and work on down towards his feet.

Q. Did you see what he was actually doing down there?

A. No, sir; I did not see what he was doing down there.

Q. Did you observe any Treasury Department order forms for Narcotic purchases on Johnny Clark's person that evening? A. No, sir.

Q. Or any mentioned or discussed?

A. No, sir.

Q. Were you present—

Mr. Roberts: Strike that.

Q. (By Mr. Roberts, continuing): Now, after this, what then happened?

A. After Agent Gooder had completed, had apparently completed his search, I saw him give Johnny Clark some money. [214]

We then proceeded to 22nd and East Thomas Street, where we parked the car.

Q. Then what happened there?

A. Johnny Clark got out of the car and walked

(Testimony of Robert W. Waitt.)

kitty-corner across the street, heading—at first he was walking in a northeasterly direction, and as he neared the southeast corner of the intersection, on the corner he turned and walked east down a hill out of my sight.

Q. And who, if anyone else, was with him at that time? A. Detective Sprinkle.

Q. All right. Now what next happened?

A. I at that time was sitting in the back seat of the car. I got from the back seat into the front seat with Agent Gooder. We waited there approximately twenty minutes, maybe a little more than twenty minutes.

I saw Johnny Clark reappear from over the hill and walk directly to our car with Detective Sprinkle following him.

Q. And then what happened?

A. He came to our car and opened—Agent Gooder opened the back door, and as Johnny Clark got in, he handed him a package.

Q. Did you observe that package?

A. Yes, I did. [215]

Q. Would you examine the contents of Plaintiff's Exhibit No. 1, Mr. Waitt, and state what it is, if you know?

A. This is the package that I saw Johnny Clark hand Agent Gooder as he arrived back in our automobile.

Q. How are you able to make that definite statement?

(Testimony of Robert W. Waitt.)

A. At that time I placed my initials on it, and I see my initials on it today.

Q. Now, at the time you observed it in the car when Clark delivered it, state what, if any stamps appeared on that parcel, if any?

A. There were none.

Mr. Roberts: I have no further questions.

Mr. Chavelle: No questions.

(Witness excused.)

Mr. Roberts: Your Honor, with the Court's permission, I would like to call Mr. Gooder back for additional direct examination on one point only, which I believe is material to the Government's case.

The Court: Is that by virtue of Clark's testimony?

Mr. Roberts: Yes, Your Honor, in part, but also relating to the matter of Department Order Forms and Treasury Order Forms.

The Court: All right.

Mr. Roberts: Mr. Gooder? [216]

LAVERN E. GOODER

upon being recalled as a witness for and on behalf of the plaintiff, and having been previously duly sworn, testified as follows:

Direct Examination

By Mr. Roberts:

Q. Mr. Gooder, you have previously been sworn in this matter.

(Testimony of Lavern E. Gooder.)

I direct your attention back to your testimony about having searched the person of Johnny Clark on the evening of May 29, 1956, at or around 21st and Roy Street in this city.

I now ask you to state what, if any, Treasury Department Order Forms for the purchase of narcotics did you observe or find on his person at that time?

A. There were no order forms upon the person of Johnny Clark at all.

Q. Now, thereafter, as earlier testified, you once again searched his person, some time later that evening?

A. Yes.

Q. And that would be in the vicinity of 22nd and East Thomas Street, if I recall correctly.

State what, if any, order forms such as I have just described, Treasury Department Order Forms for the [217] purchase of narcotics, were found on his person at that time?

A. He still had no order forms.

Mr. Roberts: I have no further questions.

Mr. Chavelle: No questions.

(Witness excused.)

Mr. Roberts: For the same purpose, Your Honor, I would like to call Mr. Fahey back.

Mr. Chavelle: It is cumulative, Your Honor.

The Court: Pardon?

Mr. Chavelle: It is cumulative. Mr. Gooder has testified there were no treasury forms.

Mr. Roberts: There is a question in my mind as to whether it is definitely established.

The Court: I don't know that the testimony indicates Fahey searched him, did he? Is there testimony that Fahey searched? You say it is the same matter?

Mr. Roberts: It is the same matter but the other exhibit, Your Honor, relative to tax stamps. Also, I am advised Mr. Fahey wants to correct testimony he delivered yesterday.

The Court: All right; you may call him.

Mr. Roberts: Mr. Fahey. [218]

CHARLES FAHEY

upon being recalled as a witness for and on behalf of the plaintiff, and having been previously duly sworn, testified as follows:

Direct Examination

By Mr. Roberts:

Q. Mr. Fahey, you have previously been sworn in this matter.

A. (Witness nodded in the affirmative.)

Q. I invite your attention back to your testimony of yesterday, in which you described for the jury an intersection at 26th Avenue North and East John Street in the City of Seattle.

You have indicated to me that you wish to correct your testimony? A. Yes, sir.

Q. Will you now state what your testimony is as to that intersection, definition of streets?

A. It is at 26th and East Thomas, and not East

(Testimony of Charles Fahey.)

John. The two streets I confused, and have for years.

Q. How are you able to be definite about it this morning, sir?

A. Well, I not only looked at my notes, I drove out there last night and looked at the streets. [219]

Q. Now, what, if anything, led you astray in your testimony yesterday?

A. I used to live in an apartment facing John, and I called it Thomas for five years, and I noticed on my envelope, Exhibit No. 2, while the exhibit itself is marked properly, I note "John" on the envelope. I was wrong. It is Thomas.

Q. Now, then, with relation to Plaintiff's Exhibit No. 2, will you state whether or not at the time you found it at the fire plug it had affixed to it any Federal tax stamps? A. It had none.

Q. It had none; state whether or not you have ever had a discussion with Johnny Clark in which you may have promised him some help if he would co-operate with the Government in this case?

Mr. Chavelle: That is hearsay, Your Honor; and we object; a discussion or conversation with Johnny Clark by this witness.

The Court: We have not reached that yet.

Mr. Roberts: I might advise the Court I believe that properly this is rebuttal testimony, but in saving time——

Mr. Chavelle (Interposing): It certainly wouldn't be proper rebuttal at this stage of the proceedings [220] until we put on our case.

(Testimony of Charles Fahey.)

Mr. Roberts: As to matters brought out on cross-examination.

The Court: I think it is properly rebuttal.

Mr. Roberts: I certainly agree with the Court, and my purpose in asking the question at this time——

The Court (Interposing): If you really wish to ask the question, did he have a discussion, you may answer that question yes or no.

A. Yes, I had a discussion with Johnny Clark.

Q. (By Mr. Roberts): All right; what promise, if any, did you make to Clark?

Mr. Chavelle: I am objecting to that as hearsay. That would definitely involve a conversation between this officer and Johnny Clark, and violates the hearsay rule.

Mr. Roberts: He can state what he did, but not what Clark may have said.

The Court: Well, I will overrule the objection. It is not what Clark said, but merely what this witness did or said.

Mr. Roberts: I believe the foundation, Your Honor, is the testimony of——

The Court (Interposing): Go ahead. [221]

Mr. Roberts (Continuing): ——of Mr. Gooder about this discussion.

A. In November, as I recall, I told Mr. Clark that this United States Attorney's office would—should he follow through and tell the truth, this United States Attorney's office would refer his cooperation in the case to the State's attorney for

(Testimony of Charles Fahey.)

whatever consideration they would take in their action against him.

Q. (By Mr. Roberts): What facts, if any, led you to have such a discussion with Mr. Clark in November of last year?

A. I had reason to believe that from information that Mr. Clark——

Mr. Chavelle (Interposing): I object to that information. It is undoubtedly hearsay, your Honor. His reason to believe is based on information obtained from some other person or persons, and would be obviously hearsay, your Honor.

Mr. Roberts: I believe he can testify as to what he knew in the course of his business as a Federal Narcotics Agent.

Mr. Chavelle: He said he "obtained information." Obviously it is based on hearsay.

The Court: What rule of hearsay applies to that? [222]

Mr. Chavelle: Well, he is going to base his testimony now on something that is going to happen, and he said he received information.

The Court: He is explaining why he did something.

Mr. Chavelle: All right.

The Court: It bears on motive and intent.

Q. (By Mr. Roberts): All right.

A. I had reason to believe that Johnny Clark would not co-operate with our office in this matter.

Mr. Roberts: I have no further questions.

(Testimony of Charles Fahey.)

Cross-Examination

By Mr. Chavelle:

Q. Do you want to correct any other testimony you gave yesterday?

A. None that I can think of, counsel.

Q. None you can think of right now?

A. I believe that was my only glaring error.

Mr. Chavelle: All right. That is all.

(Witness excused.)

Mr. Roberts: At this time, your Honor, the plaintiff offers in the case Plaintiff's Exhibits Nos. 1 and 2 now marked for identification. [223]

Mr. Chavelle: No objection to them, your Honor.

The Court: Exhibits Nos. 1 and 2 may be admitted.

(Plaintiff's Exhibits Nos. 1 and 2 admitted in evidence.)

Mr. Roberts: Thank you, your Honor. The plaintiff now rests.

Mr. Chavelle: We would like to make a motion, your Honor.

The Court: All right.

Members of the Jury:

The Court will excuse you for the mid-morning recess, and the Court calls your attention to the admonition given you yesterday on a similar occasion, and asks that you heed it on this occasion.

You may now be excused.

(Whereupon, the jury retired from the court room.)

Mr. Kosher: Your Honor, the United States of America having rested, the defendant, Sam Blassingame, now moves this Court to dismiss Counts 1 and 2 of this Indictment for the reason that there is no proof in this case sufficient to take this case to the jury.

I think a fair summation of the evidence [224] is simply this:

That these Narcotic Agents together with police officers had some reason to believe that Johnny Clark could make a buy for them; that thereupon, they gave him some money and they watched him go into a certain house, and I would say that a fair inference is that he was admitted to the house by the defendant, and that he was in the house a short period of time, and thereafter a woman appeared and went into the house.

There is also evidence that there was some person, apparently, in the next house. No evidence that Blassingame was the only human being in that house. For all we know here in this case, there could have been one dozen people in the house at the time, bearing in mind that the testimony of the witness, Clark, adds up to nothing in this case.

He testified that nothing happened at the time, and the Government was permitted to impeach him, and I would say he added nothing to their case.

The only other evidence is that Clark left the house, and that Blassingame was in the door when he left; that he came to the automobile in which the

police officers were, and they thereupon found the exhibit that has been admitted in evidence to substantiate Counts I and II. [225]

Now, there is no evidence that Blassingame is the man who gave the witness, Clark, the exhibit. There is no evidence that he sold him the exhibit. There is no evidence that Blassingame had possession of this.

It is undisputed in this case from the Government's own testimony that this house belonged to a woman who answered to the name of Chinkie Johnson.

Now circumstantially it would seem to me that it is just as inferrable that some other occupant in the house gave the exhibit to the witness Clark, or that the woman, Chinkie Johnson, who was in the house, brought it there. Certainly, no evidence in this case that he bought or obtained possession of this exhibit from the defendant Blassingame.

The Court: Mr. Roberts—are you going to speak on the same thing?

Mr. Chavelle: I was going to refer to my memorandum of authorities referring to sale and possession.

The Court: Mr. Roberts?

Mr. Roberts: If your Honor please.

The Court: As to Counts I and II only.

Mr. Roberts: While I readily agree that the case against the defendant on Counts I and II, is it?

Mr. Chavelle: Yes, sir. [226]

Mr. Roberts: Relating to May 29, 1956, are circumstantial, I feel there is an overwhelming amount

of evidence to go to the jury on the question, particularly in view of just some of the matters the jury can consider:

Officer Kirschner testifying that he was with Clark when a telephone call——

The Court (Interposing): There is no question but that I think circumstantial evidence would take it to the jury on the fact he acquired the narcotics or heroin, as covered in Exhibit No. 1, at that address.

Mr. Roberts: And from the defendant.

The Court: Well, how do you connect it with the defendant?

Mr. Roberts: Primarily because a call was made to Sam Blassingame, and that is who they went there to see, and that is who let Clark in the house, and that is who let Clark out of the house. Albeit there may have been someone else in the building at the time, that is a question for counsel to argue to the jury; but I also can argue.

The Court: I think there may be some basis for the motion. However, the Court will reserve ruling at this time, and we will proceed.

I might indicate I will probably reserve it until there is something very material in the evidence in the defendant's case, and probably reserve the ruling [227] until the time that the defendant's case is in.

Mr. Chavelle: That is without prejudice to our renewing our motion?

The Court: I don't deny it. I am merely reserving it.

Mr. Chavelle: I will ask the Court for a recess.

The Court: Yes. You will be ready with your opening statement when we reconvene?

Mr. Chavelle: Yes, we will.

The Court: All right. The Court will take a fifteen-minute recess.

(Whereupon, at 11:00 o'clock a.m., a recess was had in the within-entitled and numbered cause until 11:34 o'clock, a.m., January 16, 1957, at which time, counsel and the defendant heretofore noted being present, the following proceedings were had, to wit:)

The Court: You may call the jury.

(Whereupon, the jury was returned to the court room.)

The Court: You may be seated.

It is stipulated that the jury and the defendant are present in the court room?

Mr. Chavelle: So stipulated your, Honor. [228]

Mr. Roberts: So stipulated, your Honor.

The Court: You may proceed.

Mr. Kosher: Your Honor, Ladies and Gentlemen of the Jury, and counsel for the Government:

At this time it is my duty as co-defense counsel to outline to you in a very brief sort of way what the defense in this case will attempt to prove.

Our evidence will disclose that the defendant, Sam Blassingame, is a man thirty-three years of age; that he has been a construction worker, and that he

has worked in the shipyards, and, to a very small extent, he has done some commercial gambling.

The evidence will show that he is a married man, and the father of three children.

Our evidence will disclose that some time prior to May 29, 1956, Mr. Blassingame was separated from his wife, and they were living separately and apart. Some time prior to May 29, 1956, he rented a room at 231-23rd North. This house, the evidence will disclose, was owned by a lady by the name of Bernice Fitzgerald, who has a nickname of "Chink."

The evidence will disclose she is a colored lady, although she looks Oriental, and has picked up the nickname "Chink."

The evidence will show on May 29, 1956, [228a] Mr. Blassingame was not on these premises owned by Miss Fitzgerald, and that he did not possess any narcotics, nor did he sell any, nor give any away, nor did he dispense them, and that he had nothing whatever to do with the possession of any narcotics in the hands of Mr. Clark, the Government witness, and that he did not sell him any, or give him any, or receive any money from him.

With reference to Count III of this Indictment, the evidence will show on June 19, 1956, in this area known as 26th and East Thomas, that the defendant Blassingame was not there, and that he was not upon the landing of the stairway, and that he did not possess any narcotics on that date, nor did he dispense any.

The evidence will show that he was nowhere

around this area where the fire hydrant was supposed to be, and that he did not leave any narcotics there, and he did not have anything to do with any narcotics that may have been found there.

After all the evidence is in, Ladies and Gentlemen of the Jury, we will ask you to return a verdict of non guilty as to all counts as to this defendant, Sam Blassingame.

(Whereupon, there was a brief pause.)

Mr. Kosher: Take the witness stand. [229]

SAM BLASSINGAME

upon being called as a witness for and on behalf of the defendant, and upon being first duly sworn, testified as follows:

Direct Examination

By Mr. Kosher:

Q. Will you state your name, please?

A. Sam Blassingame.

Q. And what is your residential address, Mr. Blassingame? A. 118-25th North.

Q. And how old are you? A. Thirty-three.

Q. And where have you worked in the past?

A. At the shipyards in Pasco, and I was up in Alaska for two years.

Q. And have you done some commercial gambling? A. A little bit.

Q. Now, calling your attention to May 29, 1956, do you remember that date? A. Yes.

Q. Were you married at that time?

(Testimony of Sam Blessingame.)

A. Yes, I was.

Q. And are you still married? [229a]

A. Yes.

Q. And what is your wife's name?

A. Maria.

Q. Do you have some children, Sam?

A. Three.

Q. How old are they?

A. Two, three and six.

Q. And on May 29, 1956, were you separated from your wife? A. Yes.

Q. Now, calling your attention to some premises that are located at 231-23rd North, do you know where those premises are? A. Yes.

Q. And what kind of a place is that?

A. It is a duplex.

Q. Did you ever reside at 231 North 23rd?

A. Yes.

Q. Now, on May 29, 1956, were you living there?

A. No.

Q. Now, on May 29, 1956, did you either sell or give any narcotics to a man by the name of Clark?

A. No.

Q. Or to any other person? [230]

Mr. Roberts: Pardon me, your Honor. I did not hear the witness' response to the question as to whether or not he resided at the premises on May 29, 1956.

The Witness: I did not.

Mr. Roberts: You did not?

The Witness: No.

(Testimony of Sam Blassingame.)

The Court: Keep your voice up, Mr. Blassingame, so that the jury and all counsel can hear you.

Q. (By Mr. Kosher, continuing): Did you sell or give or possess any narcotics on May 29, 1956?

A. I did not.

Q. Now, with reference to this area known as 26th and East Thomas, do you know where that is, Sam?

A. Yes.

Q. And when you were served with this indictment, did you go out and look at that area?

A. Yes.

Q. Did you find a fire plug out there?

A. Yes.

Q. Have you ever deposited or left any narcotics at that fire plug?

A. No.

Q. And did you do so on June 19, 1956?

A. I did not. [231]

Q. Now, do you know where the stairway is out there?

A. Yes.

Q. Were you ever on that landing on June 19, 1956?

A. I was not.

Mr. Kosher: Excuse me a minute.

(Whereupon, there was a brief pause.)

Q. (By Mr. Kosher): Now, do you recognize the gentleman who answered to the name of Kirschner here in court?

A. Yes.

Q. Now, do you remember seeing him some time in October of this year—of last year, I mean?

A. I remember seeing him, but just the exact date or month, I don't know.

(Testimony of Sam Blassingame.)

Q. Now, did you ever have a conversation with him with reference to this case? A. No.

Q. Did he ever discuss this case with you?

A. Never.

Q. Or did you ever discuss the case with him?

A. No.

Q. Now, he testified here that you told him that the only person that could have made you, or fixed you, or words to that effect, was a man by the name of Clark.

Did you ever make any such statement? [232]

A. I did not.

Q. Did you ever discuss a man by the name of Clark with him? A. No.

Mr. Kosher: You may inquire.

Mr. Roberts: Is that all, counsel?

Mr. Kosher: Yes.

Cross-Examination

By Mr. Roberts:

Q. Sam, when did you work in the shipyards?

A. From 1942 until 1948.

Q. From 1948 until you got busted in September, 1956, where did you work?

Mr. Chavelle: I object to the word "busted."

Mr. Kosher: I object to the word "busted."

Mr. Roberts: Pardon me, your Honor——

The Court (Interposing): Objection sustained.

Mr. Roberts (Continuing): The witness was about to answer the question.

(Testimony of Sam Blassingame.)

The Court: Well, I don't know what the word "busted" means.

Mr. Roberts: The witness may, your Honor.

The Court: I will sustain the objection. [233]

Q. (By Mr. Roberts, continuing): What does "busted" mean, Sam?

Mr. Kosher: I will object on the grounds it is immaterial.

The Court: Objection sustained.

Q. (By Mr. Roberts, continuing): Where did you work between 1948 and September, 1956?

A. I worked in Pasco from 1948 until 1951.

Q. What did you do in Pasco?

A. Construction work.

Q. With what company?

A. Marsh and Knutson Construction.

Q. From 1951 on, what did you do?

A. I was in Alaska for two years.

Q. Doing what? A. I was a bartender.

Q. Where in Alaska? A. Fairbanks.

Q. What particular establishment?

A. Old Aces.

Q. What is it?

A. A club by the name of Old Aces.

Q. And that was for two years, is that right?

A. Yes. [234]

Q. And that would be from 1951 through 1953, or thereabouts? A. Something like that.

Q. You were in Alaska during that time; all right, where did you next work?

A. In Yakima and Moses Lake.

(Testimony of Sam Blassingame.)

Q. Were you working steadily throughout these years?
A. No.

Q. Well, how long did you work?

A. Throughout which years?

Q. Pardon me?

A. I was working steady from 1942 until 1948 in the shipyards.

Q. All right. Then sporadically from 1948 through September of 1956, is that right?

A. Well, I worked two years in Alaska. I worked in Pasco.

Q. When did you work in Pasco?

A. It was in 1948, the last of 1948.

Q. Do you recall being interviewed by Federal Narcotics Agent Charles Fahey on September 28, 1956, just after you had been arrested, and your interview took place in the King County Jail, and his asking you where you had been recently working?

A. I remember Charlie Fahey coming up to talk to me [235] when I was in the city jail; and he asked me, and I went to talk to him, about any stuff, and I told him I didn't know anything about any stuff; and he said, "That is all."

Q. What do you mean by "stuff"?

A. Just what he said. I don't know what he meant about stuff, or whatever stuff he was talking about.

Q. You don't know what "stuff" is, is that right?
A. No.

(Testimony of Sam Blassingame.)

Q. Do you recall Mr. Fahey asking where you had been working recently? A. No.

Q. Do you recall telling him you had not worked since 1948 or 1949, and you couldn't recall which?

A. No, he didn't ask me that.

Q. You worked—did you work as a gambler in 1948 or '9, '50, '1, '2, '3, '4 or '5—any of those years?

A. I haven't worked as a gambler. I have gambled.

Q. Did you ever win a Cadillac gambling?

A. Did I ever win a Cadillac?

Q. Yes.

Mr. Kosher: I object to that on the grounds it is immaterial.

The Court: Objection overruled.

Q. (By Mr. Roberts, continuing): A Cadillac, Sam? [236]

A. I have never owned a Cadillac.

Q. I said, did you ever win one gambling?

A. I have never owned one.

The Court: The question is, did you ever win one?

The Witness: No.

Q. (By Mr. Roberts): Now, when did you live at 231-23rd North in this city?

A. I believe it was in January or February in 1956.

Q. Of 1956? A. Yes.

Q. And you testified that you were not living there on May 29, 1956? A. I was not.

(Testimony of Sam Blassingame.)

Q. Were you at the apartment that night?

A. No.

Q. Where were you that night?

A. On 118-25th North.

Q. When did you move into 118-25th North?

A. I don't know the exact date.

Q. Before May of 1956? A. Yes.

Q. On October 3, 1956, you were living at 118-25th North, were you not? [237]

The Court: What date? Will you repeat that question?

Mr. Roberts: Yes, your Honor.

I have asked the question:

Q. (By Mr. Roberts, continuing): Is it not a fact that on October 3rd of 1956 you were living at 118-25th North? A. Yes.

Q. At that time you apparently just had a rug on the floor, is that right?

A. Apparently had what?

Q. Just a rug on the floor, little or no furniture?

A. On which floor?

Q. On the front-door floor, it would be on.

A. Yes, on the front; there was a rug on the front at the front door.

Q. Were there any chairs around in there?

A. I don't think so.

Q. So, how did you get along from before May until October with no furniture?

A. From when?

Q. From when you first moved in there?

A. I had furniture when I first moved in there.

(Testimony of Sam Blassingame.)

Q. And you lost the furniture, is that right?

A. That is right. [238]

Q. Who is Chinkie Johnson?

A. Bernice Fitzgerald.

Q. Is she a friend of yours? A. Yes, sir.

Q. Counsel has suggested in some questions that she is a prostitute. Is she?

A. I wouldn't know.

Q. Pardon me? A. I wouldn't know.

Q. You don't know whether or not she is?

A. I don't know.

Q. Is she a girl friend of yours?

A. She was at one time.

Q. You and your wife were separated during May and June, 1956, were you not? A. Yes.

Q. She was down in Portland, Oregon, at that time, was she not? A. Yes.

Q. As a matter of fact, you were still separated when you were arrested in September, 1956?

A. That is right.

Q. Isn't that correct? Are you actually back together now? A. No. [239]

Q. Do you know Johnny Clark? A. Yes.

Q. How did you come to know Johnny?

A. Through gambling.

Q. Pardon me? A. Through gambling.

Q. Through gambling; do you associate with him very much? A. Yes.

Q. You knew he was a drug addict, then?

A. I couldn't swear that he were, no.

Q. Pardon me?

(Testimony of Sam Blassingame.)

A. I couldn't swear he used drugs, or not.

Q. Do you know Wally Hanks? A. Yes.

Q. You knew he was in the drug business?

A. I don't know.

Q. Do you know Mary Childress?

Mr. Kosher: Object to that on the grounds it is immaterial.

The Court: It would appear to be.

Mr. Roberts: It shows his association, if your Honor please, with other individuals.

The Court: Well, I don't know on what issue. I am inclined to sustain the objection unless [240] you want to make an offer of some kind.

Mr. Roberts: I don't believe it is necessary, your Honor; I will withdraw the question.

The Court: All right.

Q. (By Mr. Roberts, continuing): As I understand it, you deny ever having a conversation which Officer Kirschner has testified he had with you on October 3, 1956, is that right?

A. Deny what, now?

Q. You never had that conversation with Mr. Kirschner?

A. Never had no conversation with Kirschner when?

Q. On October 3, 1956, in your apartment at 118-25th Avenue North?

A. I have talked to him on—yes, I talked to him.

Q. Well, I understood you to say that you did not talk with him at that time?

A. About what?

(Testimony of Sam Blassingame.)

Q. Did you talk to him? A. About what?

Q. About narcotics.

A. No; I didn't talk to him about no narcotics.

Q. All right; what led to that meeting? How did you two meet together?

A. When I was living on 15th, which was——

Q. (Interposing): I am referring to October 3, 1956. [241]

A. If you let me, I will get around to that.

Q. All right.

A. When I was living on 15th, I had a Collie, and she had some pups, and he wanted one, but at the present time I have got rid of all of them, and I didn't get around to—in other words, he didn't get one.

Q. Was Mr. Kirschner a friend of yours?

A. How is that?

Q. Is he a friend of yours?

A. No; I wouldn't say he is a friend of mine. I know him.

Q. You have known him for some years?

A. Yes.

Q. How did he happen to know you had some Collie pups?

A. How did he know? Evidently he saw them.

Q. Well, is that why he came to your apartment on October 3, 1956? A. No.

Q. Do you remember him coming to your apartment at that time? A. Yes.

Q. What did you talk about?

A. We talked about the dog.

(Testimony of Sam Blassingame.)

Q. About the dog? [242] A. Yes.

Q. And that is all you talked about?

A. That is all.

Q. And at that time did you just have a rug inside the door, and no furniture in the place?

A. There was furniture in the place, every place other than there, the living room; there was no furniture in the living room, no.

Mr. Roberts: I have no further questions, your Honor.

Redirect Examination

By Mr. Kosher:

Q. Did this police officer want you to give him a Collie dog, Sam?

A. No; I don't think so. In fact, I didn't even know if he wanted one at this particular time, but he had asked me about one once before.

I had no intention of giving it to him, but if he wanted to buy one, I would sell it.

Q. And he did discuss the possibility of getting a Collie dog from you? A. Yes.

Q. Now, Sam, I didn't ask you this:

Do you use narcotics yourself? [243]

A. No.

Q. Have you ever used any narcotics?

A. No.

Mr. Kosher: That is all.

Mr. Roberts: I have nothing further.

Mr. Chavelle: That is all, Sam.

(Witness excused.)

The Court: Do you have any other witnesses you want to get on, or do you want to recess?

Mr. Chavelle: A recess, if your Honor please.

The Court: All right; we will recess until [244] 1:45.

* * *

ALLEN CLAIBORNE

upon being called as a witness for and on behalf of the defendant, and upon being first duly sworn, testified as follows:

The Clerk: Will you state your full name and spell your last name, please?

The Witness: Allen Clairborne, A-l-l-e-n C-l-a-i-b-o-r-n-e (spelling).

Direct Examination

By Mr. Chavelle:

Q. Your name is what, again?

A. Allen Claiborne.

Q. Where do you reside?

A. 1018-9th Avenue.

Q. What is your occupation?

A. Private detective.

Q. How long have you been a private detective?

A. I have been a detective for 26 years, of which 20 years in the private field.

Q. You are licensed under the laws of the State of Washington? A. Of the City of Seattle.

Q. Of the City of Seattle; I will ask you if you are familiar with the intersection known as 26th and East [250] Thomas in Seattle? A. I am.

(Testimony of Allen Claiborne.)

Q. Have you had occasion to visit that area?

A. Yes.

Q. How often have you been there?

A. Four times.

Q. Within what period of time in relation to this case?

A. The first time was December 30, and the second and third times were on January 3rd, and the last time was today.

Q. I will ask you if you have been there in the night time? A. I have; twice.

Q. What dates were you there at night?

A. December 30th and January 3rd.

Q. At what hour of the night on December 3rd, do you recall? A. About 6:20 p.m.

Q. Or on January 3rd? A. 6:00 p.m.

Q. Can you describe the stairway there?

A. Yes; there is a stairway that is a continuation of East Thomas Street, and runs from 26th up to Madison, and it has two landings, one about one-third of the way up, [251] and another about two-thirds of the way up.

Q. Approximately what is the length of that stairway, do you know? A. About 90 feet.

Q. What is the condition of the lighting there at night?

A. At the bottom of the stairway, which comes right into the intersection of East Thomas, to the north of the north edge of the sidewalk, there is a utility pole with a dim, incandescent bulb.

C. F. KIRSCHNER

upon being recalled as a witness for and on behalf of the defendant, and having been previously duly sworn, testified as follows:

Direct Examination

By Mr. Chavelle:

Q. You have already been sworn, and you testified in this cause, haven't you, Officer?

A. That is right.

Q. Your name is Officer Kirschner?

A. C. F. Kirschner.

Q. Of the Seattle Police Department?

A. Yes.

Q. Are you familiar with the stairway at 26th and East Thomas Street in the City of Seattle?

A. Yes; I am.

Q. Were you familiar with it on June 19, 1956?

A. Yes.

Q. Have you seen it since? A. Yes.

Q. Has there been any material change in that stairway? A. No; there has not been.

Q. Pardon? [255]

A. No; there has been no change.

Q. Any change in the lighting, to your knowledge? A. No.

Q. At the time you testified as to the date of June 19th, 1956, was it dark?

A. It was dark, yes. It was nighttime.

The Court: Do you recall whether there was moonlight, or raining?

The Witness: It was a clear night. It wasn't

(Testimony of C. F. Kirschner.)

raining. I don't recall if the moon was out or not.

The Court: It was dark?

The Witness: It was dark, yes.

Mr. Chavelle: I think that lays sufficient foundation.

Mr. Roberts: I would consider that sufficient foundation, your Honor.

Mr. Chavelle: Thank you, Mr. Kirschner.

The Court: You have no questions?

Mr. Roberts: No.

(Witness excused.)

Mr. Chavelle: Mr. Claiborne. [256]

ALLEN CLAIBORNE

upon being recalled as a witness for and on behalf of the plaintiff, and having been previously duly sworn, testified as follows:

Direct Examination

(Continued)

By Mr. Chavelle:

Q. Now, Mr. Claiborne, it has been established by another witness that the stairway has not been changed, and that conditions are similar.

I will ask you if you caused an experiment to be made December 30th and January 3rd of this past couple months as to visibility of persons situated on a stairway; what time it was, and give us all the facts and circumstances concerning the experiment?

A. On December 30th between 6:20 to 6:50 p.m., I had you stand on the top level and on the bottom

(Testimony of Allen Claiborne.)

A. This is a photograph taken from the east side of 26th, showing——

Mr. Roberts: I will object, your Honor, to any further testimony as to what the photograph is, until there is more proper foundation as to who took the photograph.

I don't mean to impede you, counsel. If you want to ask who took the photograph——

Mr. Chavelle (Interposing): I was going to ask that, and what it represented, first.

Q. (By Mr. Chavelle): Now, when was that taken? A. On the night of January 3rd.

Q. And by whom?

A. By a professional photographer, Earl Penninger.

Q. And under your supervision and direction?

A. Under my supervision and direction.

Q. And were you present at the time of the taking of the picture? A. I was.

Q. And does that truly portray what that picture is intended to represent?

A. It does. [260]

Q. What time was that picture taken?

A. About 6:15 p.m.

Q. And what position was the photographer in when he took that picture, in relation to the stairway?

A. He was on the east side of 26th Avenue, where Thomas comes in.

Q. How many feet would that be from the bottom of the stairway?

(Testimony of Allen Claiborne.)

A. That would be about forty feet.

Q. Approximately 40 feet? A. Yes.

Q. And how far were you away? I will ask you that. Who is in that picture? A. The——

Mr. Roberts (Interposing): I will object, your Honor.

The Court: Have you seen it?

Mr. Roberts: No. I would like to take a look at it, your Honor.

Once again, I do not want to slow up the proceedings.

May I inquire on voir dire, your Honor?

The Court: You may.

Mr. Roberts: What was the shutter speed at the time the picture was taken? [261]

The Witness: I don't know. I didn't shoot it.

Mr. Roberts: What was the action?

The Witness: He asked me if I wanted normal lens opening, and I said yes.

Mr. Roberts: Do you know what the aperture was?

The Witness: I don't.

Mr. Roberts: What type of film was used?

The Witness: I am no photographic expert.

Mr. Roberts: Even though I don't believe there is any foundation laid, your Honor, I will stipulate that this may be offered in evidence.

Mr. Chavelle: No objection? We will offer it, your Honor.

The Court: All right. May I see it?

(Testimony of Allen Claiborne.)

All right. Defendant's Exhibit No. 1-A may be admitted. A-1, rather.

(Defendant's Exhibit No. A-1 admitted in evidence.)

(Whereupon, there was a brief pause.)

Mr. Roberts: I have no objection to this photograph.

The Clerk: Defendant's Exhibit Number A-2 for identification. [262]

(Defendant's Exhibit No. A-2 marked for identification.)

The Court: Exhibit A-2.

Mr. Roberts: Being admitted, your Honor.

The Court: All right; Exhibit No. A-2 may be admitted.

(Defendant's Exhibit No. A-2 admitted in evidence.)

Mr. Roberts: May I inquire as to the date these were taken?

The Witness: January 3rd.

Mr. Roberts: Of this year?

The Witness: Yes.

Mr. Roberts: 1957.

Q. (By Mr. Chavelle): Approximately how far—what distance is the alley from the bottom of the stairway?

A. Well, it is a standard city block. That would give it about 120 feet to the alley.

(Testimony of Allen Claiborne.)

Q. From the bottom of the stairway?

A. No; from the east curb. About 160 feet from the bottom of the stairway.

Q. 160 feet from the bottom of the stairway?

A. Yes.

Mr. Chavelle: You may inquire. [263]

Mr. Roberts: Thank you.

Cross-Examination

By Mr. Roberts:

Q. Mr. Claiborne, you have studied this intersection, and maybe you can clarify all our minds as to what it looks like.

What direction does 26th Avenue proceed through the intersection, if it does?

A. It doesn't go through. It is a dead end.

Q. Will you describe it to us as vividly as you can?

A. Yes. 26th, running from John to Thomas, is a standard city block running approximately north and south.

Q. 26th Avenue goes to the south from the intersection of 26th and Thomas, but it doesn't go through to the north? A. That is true.

Q. And isn't it true that Thomas goes to the east?

A. Dead-ends to the west, at the west.

Q. And goes down hill? A. Yes.

Q. But doesn't go to the west? A. No.

Q. On the west we have a bank or a hillside, with the steps on it? [264] A. Yes.

(Testimony of Allen Claiborne.)

Q. And you estimate the length of the steps about 90 feet? A. Approximately.

Q. Did you actually get a tape out?

A. No.

Q. Now, as these photographs describe, there are some sodium vapor lights on Madison Street above? A. That is right.

Q. Did you attempt to determine whether you can stand at the base of the stairs and see an automobile on the curb of Madison Street?

A. Oh, yes; on Madison Street you can see cars go by.

Q. You can see?

A. Colors, well, it is always as under sodium vapor, a light green shows up as blue.

Q. On the south side of Thomas Street, as you go out of the intersection down the hill, there are some homes? A. Yes.

Q. And the yards there in those homes are more or less terraced as they go up to the intersection?

A. Yes.

Q. They have tried to level them off, and terrace one into the other; is that correct?

A. Yes. [265]

Q. And your principle testimony here is that the last house facing Thomas Street is pretty close to the corner? A. Yes.

Q. Isn't it a fact that the yard of that house is what we call sub-grade, or below grade on the street? A. That is true.

(Testimony of Allen Claiborne.)

Q. It is down and sunken, isn't it?

A. Yes.

Q. So that if you were standing on the sidewalk at 26th and just about to turn the corner and go down Thomas Street to your right, and you looked at this house, between where you are standing on the sidewalk and that house, there would be a hill rolling off, wouldn't there? A. That is true.

Q. And that isn't really a putting green lawn on that hill, is it?

A. You mean in front of that corner house?

Q. I mean on that little house right off the sidewalk.

A. I am not a golfer. Explain what a putting green is.

Q. A nice lawn?

A. No; I wouldn't say it is rolled.

Q. Well, there it is a very poor grass, tangled type [266] of thing, isn't it?

A. I didn't examine the lawn.

Q. Also, on the parking strip, if you were standing on that sidewalk looking down?

A. There is a parking strip on both sides.

Q. Toward your left, towards the intersection?

A. Yes.

Q. Where that fire hydrant is located?

A. Yes.

Q. And that isn't a putting green lawn?

A. It is green.

Q. It is grass? A. It is grass, and green.

Q. But it is pretty coarse grass?

(Testimony of Allen Claiborne.)

A. It is not very high.

Q. You looked at it today, didn't you?

A. Yes.

Q. It is not green today?

A. Yes; it is green. I laid down on it.

Q. I looked at it last night myself, and it looked a little brown to me.

Mr. Kosher: Just a minute. I object to counsel's statement.

The Court: It may be stricken.

Mr. Roberts: I will strike the question. [267]

The Court: And the jury will disregard it.

Mr. Kosher: And I move for a mistrial at this time, if your Honor pleases.

The Court: Motion will be denied. The jury will disregard the statement of counsel, referring to the statement of Mr. Roberts.

You may proceed, Mr. Roberts.

Q. (By Mr. Roberts, continuing): Now, in any event, the grass has been cut down along the fire hydrant and parking strip?

A. The parking strips have been mowed.

Q. Once again, now, to get a picture of the intersection in mind, at the base of the stairs leading up from the intersection to Madison, there is a sidewalk between the base of the stairs and the street, is there not? A. True.

Q. How wide is that? A. About five feet.

Q. And then if you go——

A. (Interposing): And also a parking strip.

Q. Yes, that is correct, and if you go a little to

(Testimony of Allen Claiborne.)

the south from the base of the steps, you will have then the street going across. That would be 26th Avenue North? A. Yes.

Q. How wide is the street?

A. 32 feet. [268]

Q. Pardon me? A. 32 feet, I would say.

Q. 32 feet, yes, and how wide is the parking strip at the point of the fire hydrant from the street?

A. About three feet.

Q. So that you have three feet plus sixty feet; what is the total distance from the fireplug, then, to the base of the stairs?

A. You are giving me too many figures. What was the last part of the question? What would be the total distance from the fireplug to the base of the stairs?

Q. What would be the total distance from the fireplug to the base of the stairs?

A. Fireplug to base of stairs, about forty feet.

Q. I thought the street was 60 feet?

A. No; about 32 feet.

Q. Forty feet is the estimate; all right.

Now, at the time you took these photographs, did you have anyone parking his car just under the brow of the hill on Thomas Street, and turn the headlight on the steps to see if you could recognize anyone coming down there? A. No.

Q. At the time you made these experiments, did you have anyone stand at the fireplug while you put yourself in the yard of the last house on Thomas Street, apparently right [269] over the roll of the

(Testimony of Allen Claiborne.)

hill? A. On the corner of 26th, no.

Q. Did you see if you could recognize anybody?

A. No.

Q. What would be the distance from the edge of the kept yard in that last house to the fire hydrant?

A. If you are in the yard, you have about an eight-foot embankment.

Q. That is right; now, what would be the distance?

A. Well, you have got about a 50-foot lot there.

Q. And you are in the extremity of the end toward that embankment?

A. Probably twenty-five to thirty feet.

Q. Well, does the house extend over the yard? I don't mean to confuse you, but you testified earlier you thought the distance from the fireplug to the house was about 15 feet.

A. To the house?

Q. Yes.

A. That would be—yes, I guess it would be, to the carport, about 15 to 20 feet.

Q. So that if you were standing in the yard you would be about that far from the fireplug, apparently? A. Yes.

Q. And you didn't try that experiment? [270]

A. No, I did not.

Mr. Roberts: I have no further questions, your Honor.

Mr. Chavelle: No further questions, your Honor. May this witness be excused?

(Testimony of Allen Claiborne.)

The Court: Yes; I assume there is no reason to keep him, Mr. Roberts?

Mr. Roberts: I have no objection.

The Court: You may be excused from further attendance, Mr. Claiborne.

(Witness excused.)

Mr. Chavelle: If the Court please, the defense rests at this time.

The Court: All right.

Mr. Chavelle: We would like to make a motion.

The Court: Do you wish to make the same motion you made before?

If agreeable with you, the Court will consider they are made as though made now, and will reserve ruling.

Mr. Chavelle: All right.

The Court: Is that agreeable?

Mr. Chavelle: Yes. [271]

* * *

Reporter's Certificate

I, Earl V. Halvorson, official court reporter for the United States District Court, Eastern and Western Districts of Washington, do hereby certify that the foregoing is a true and correct transcript of the proceedings had in the within-entitled and numbered cause on the date hereinbefore set forth; and I do further certify that the foregoing transcript has been prepared by me or under my direction.

/s/ EARL V. HALVORSON. [361]

In the United States Court of Appeals
for the Ninth Circuit
No. 15430

SAM BLASSINGAME,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

STATEMENT OF POINTS UPON
WHICH APPELLANT WILL RELY

Comes Now the Appellant, Sam Blassingame, and herewith sets forth the points upon which he will rely in the appeal of the above-entitled action:

1. The District Court erred in denying defendant's motion for dismissal of Counts I and II of the Indictment, and allowing the jury to consider the evidence adduced in support of said counts.

2. The evidence adduced by the Government in support of the Indictment was insufficient to take the case to the jury, or to support the verdict and/or judgment upon the charge contained in the indictment.

3. The District Court erred in denying the defendant's motions for mistrial.

CORNELIUS CHAVELLE,

MAX KOSHER,

JOHN N. LEAVITT,

Attorneys for Appellant;

By /s/ JOHN N. LEAVITT.

[Title of Court of Appeals and Cause.]

AMENDED DESIGNATION OR
RECORD UPON APPEAL

Comes Now the defendant and appellant herein,
Sam Blassingame, and designates the following as
Appellant's Record Upon Appeal:

1. Indictment.
2. Verdict of the Jury.
3. Notice of Appeal.
4. Judgment and Sentence.
5. Motion in Arrest of Judgment.
6. Testimony of the following-named witnesses:
 - (a) Chester G. Sprinkle,
 - (b) Laverne E. Gooder,
 - (c) Charles Fahey,
 - (d) Johnny Clark,
 - (e) Charles F. Du Puis,
 - (f) C. F. Kirschner,
 - (g) William E. Henaby,
 - (h) Robert W. Waitt,
 - (i) Sam Blassingame,
 - (j) Allen Claiborne.

CORNELIUS CHAVELLE,
MAX KOSHER,
JOHN N. LEAVITT,
Attorneys for Appellant.

